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THE SCIENTIFIC SPIRIT IN POLITICS[1]

JESSE MACY

Comparison between the methods prevailing in science and in politics began as early as the presidential campaign of 1872. Already there was a distinctly recognized scientific world which was demanding recognition in colleges and universities. The terms scientific spirit and scientific method were becoming clearly defined. The men who were at the time responsible for the conduct of public affairs were in a better position to appreciate the change involved than any after generation can be. To those abreast with the times, Darwin's *Origin of Species* came as a great revelation. They themselves actually experienced the transition from dogmatism and authority to experiment and demonstration. For the first time in history men had planted their feet firmly upon the solid earth; and they refused to be moved. Scientific devotees became informally pledged to each other to use their utmost endeavor to know all that man may know in the realm of nature, regardless of any moral, religious or extraneous influence of any sort. In this limited field they made truth, or actuality, their single goal. All liars, all blunderers, and all who had a disposition to believe a false report, disappeared from the ranks of the promoters of science. The discipline main-

[1] Presidential address, at the annual meeting of the American Political Science Association, Cincinnati, Ohio, December 28, 1916.

tained was effective. It involved an early form of the death penalty. He who would tell a lie in the interest of a preconceived theory, or through prejudice should fail to perceive all that was visible in the work in hand, was banished or excluded from the charmed circle. Of all races, those and only those were admitted to membership who manifested superior ability in the mastery of material phenomena.

There was no lack of controversies among men of science, as among statesmen and politicians. They were divided into different schools, but scientific debate was strictly limited to the few points upon which greater light was required. The generally accepted theory of evolution involved a belief in spontaneous generation. It was natural that an aspiring young biologist should wish to be the first to demonstrate that theory. Reported discoveries were numerous. Much time and attention were being wasted with false reports on the subject. Finally Huxley and Tyndale made such an exposure of the errors of the *pseudo* discoverers as served to give notice that until something really important had been ascertained there was to be no further trifling with the subject. This did not mean that the theory had been rejected; it meant simply that discipline should be maintained and human effort economized; distracting use of words was suppressed. Scientific debate thus became the model as a method for dealing with all questions on which men differ in opinion.

Statesmen and teachers of the period following the civil war remembered a time when practically the same methods in debate prevailed in both science and politics. To those who approved the new method, it seemed evident that that which had wrought a beneficent revolution in science if applied to politics would be even more effective in the promotion of human welfare.

In the light of the new revelation, the civil war appeared as a veritable tragedy. Good men through lack of a spirit and temper already achieved in science had been thrown into hostile camps and had become victims of the great war. After the war events seemed to indicate that the differences had been imaginary. Nearly all in both sections seemed to rejoice in the fact that slavery had been abolished, and that the union was saved.

The campaign of 1872 seemed to exemplify the new spirit. Liberal republicans united with liberal democrats on the policy of universal suffrage and universal amnesty. The official democratic party accepted Horace Greeley as their candidate. The regular republican party was induced to promise a more generous policy towards the south. The war was to be a thing of the past, and all were to unite on the basis of a good understanding between the two sections.

The spirit of the new science seemed at the time to have actually taken possession of politics. The chief of the corrupt Tammany ring was consigned to prison, *crédit mobilier* iniquities were exposed; reforms in the spoils system were inaugurated and the injustice of the war tariff was made known.

Our federal form of government seemed well adapted to facilitate the extension of the scientific method to politics. The ordinary citizen begins formal education as a member of a public school. It seemed an easy matter to cultivate in him a habit of observing the operation of the school district, the town, county, state and nation. Associated with each political institution are activities which any beginner in geography or United States history may know at first hand. Through these agencies every citizen may form a life-long habit of observing political, social and industrial phenomena. A parallel thus appears between two fields of science—one dealing with oxygen, hydrogen, and gravitation; the other with cities, states, and numerous other political and social institutions. Both furnish occasion for the exercise of the same spirit and method. Each county, each city is but an experiment station for the guidance of all others. Politics, like chemistry, might in this way be made an experimental science.

Actuated by this ideal the generation which experienced the civil war and the revolution in the methods of scientific education did make instruction in civics an integral part of the public school system, and two generations of citizens have been subjected to the new system. And besides, the increased attention given to history, economics, politics and sociology in colleges and universities has been as conspicuous as that given to science.

Innumerable organizations have been called into existence having for their object the promotion of a better understanding of human relations.

In many ways the new science has come into politics; it has brought its own spirit and method into industrial, social and political activities. Medicine is being revolutionized, changed from the occult and the empirical to the scientific; and as it becomes scientific it is more social and more political. Agriculture is becoming subject to the guidance of state, nation and international organizations of applied science. Such examples are innumerable. Applied science everywhere tends to lay heavier burdens upon political and social institutions. On the administrative side of government there has been a tendency to follow the scientific method; but on the side of partisan or contentious politics, that from which most was expected, there has been little apparent gain. The new science has even given aid and comfort to the enemy.

Political scientists have themselves fallen into the habit of accepting Machiavelli as the founder of the modern school of politics. To the general public Machiavelli is chiefly known as one who justified lying and deception in politics. He gave support to the system in vogue in his own despotic state. He rid himself of ordinary notions of morality and religion and viewed political operations as they appeared. There is a superficial resemblance between the Machiavellian method and the modern scientific method. In a despotic state falsehood and deception do hold a cardinal place, similar to that of gravitation in physics. In a despotism the people must be deceived, they must be induced to accept as true that which is dictated by their rulers. They must be trained to believe not according to evidence, but according to teachings imposed by force.

Frederick the Great, writing to his prospective successor, speaks of the great importance of religion as a means of controlling the minds of subjects; but he states explicitly that it is not wise in a king to have any religion himself. "The true religion of a prince," said he, "is his own interest and his own glory. He ought by his royal station to be dispensed from having any

other. He may, indeed, preserve outwardly a fair occasional appearance for the sake of amusing those who are about him. . . . . All popes who have had common sense have held no principles of religion but what favored their aggrandisement. . . . . It is silly for a prince to confine himself to trifles contrived only for the common people." The following is his definition of politics: "Since it has been agreed among men that to cheat and deceive one's fellow creatures is a mean and criminal action, there has been sought for and invented a term which might soften the appellation of the thing, and the word which has undoubtedly been chosen for the purpose is 'politics.'"

Present day successors to Frederick the Great have added science to religion as a supporter of the policy of government by force. Bernhardi quotes Heraclitus of Ephesus as saying, "War is the father of all things," and adds, "The sages of antiquity long before Darwin recognized this principle." In the name of science sheer brute force is given first place in the state. It is made the primary duty of the state to rule the world to the extent of its ability. The state is not bound by any moral considerations which are contrary to its own interests. Ability to conquer and rule carries with it the duty to conquer and rule; and all this in the name of science and religion.

Before the advent of the theory of evolution all the operations of nature were accounted for by reference to personality. The final cause was God or beings having will or choices like ourselves. From time immemorial this had been the common conviction of mankind. Evolutionists did not deny the existence of God, but without attempting to throw any light on final cause they devoted their energies to the study of the processes of nature. The validity of scientific conclusions rests upon the assumption of uniformity in the so-called laws of nature. To admit personal interference would strike at the foundation of certainty. The accepted rule of the new order was to ignore personality; but some form of words had to be used to take the place of the earlier time-honored belief. Mere agnosticism proved inadequate. The phrase "the unknown and the unknowable," as a description of final cause, was equally unsatisfactory. The word force

was permitted to assume a new meaning; force became apotheosized. To the orthodox man of science, force as a final cause of phenomena was an absurdity; but to others force became a real entity having in itself the faculty of affecting the senses. Herbert Spencer perceived the tendency to put force in the place of God as a cause of phenomena, and he labored diligently to stem the tide against it. He taught that it was more rational to believe in spirit or personality as final cause than to attribute final cause to force; that both force and matter were beyond the reach of scientific knowledge. Despite the efforts of Spencer and other scientists, force has become very generally accepted as the God of nature. Thus exalted, force plays into the hands of the supporters of despotic government. It gives to despotism the specious claim to scientific sanction. Science thus becomes divided against itself, in one field upholding an ideal spirit of truth, in another supporting a system of falsehood and deception.

The association of truth with righteousness in government is as old as human history. From an inscription on the tomb of Darius, the ancient Persian king, the following translation is found in the *Records of the Past:* "Ormazd brought help to me and the other gods which are (because) I was not wicked, nor was I a liar, nor was I a tyrant, neither I nor any of my race. I have obeyed the laws and the right customs, I have not violated. Thou, whoever may be king hereafter, exert thyself to put down lying; the man who may be a liar him utterly destroy. If thou wilt thus observe my country will remain entire." Similar ideas find expression in all the great religious and moral codes. Especially rich in this regard are the Hebrew and Christian scriptures. Not only is telling a lie condemned, but a disposition to believe a lie is equally condemned. The righteous man is one who keeps an open mind to all truth; the lost soul is one who rejects the spirit of truth. The modern scientific spirit is simply the Christian spirit realized in a limited field of experience.

There could be no science worthy of the name until generations of martyrs to the cause of truth and righteousness had weakened the forces of tyranny. Science and democracy have

come into the modern world at the same time. They are mutually related as cause and effect.

Truth, righteousness and justice are related terms expressing fundamental qualities which are essential to human well being. Truth at first denoted what one thinks or firmly believes. That has been accepted as true which accords with common belief. Righteousness denotes a common belief respecting correct or right human relations. Justice is righteousness made visible in forms of external conduct. Truth expresses the correspondence between righteousness and justice; it is realized by harmonizing external conduct with a subjective state of mind. In modern science truth is realized by harmonizing the state of mind with the impressions received through the senses. Political institutions are the embodiment of a state of mind in visible form. They are all, however, dependent upon external phenomena known only through the senses. The state is, therefore, the meeting place for both the subjective and the objective movements for the realization of the truth. Righteousness remains an aspiration or a mere dream until it is realized in just human relations. The men of science become traitors to the spirit which gave birth to their order if they stop short of carrying their devotion to truth into every field of human relation.

A former president of this association has said that he regarded literature as a branch of politics. Of course, nothing which is of general human interest can be regarded as foreign to a righteous order in society. But we have a right to make a special demand upon the promoters of modern science for effective assistance. My wrath has often been kindled against some men of science who through a temporary accident have found themselves in the one easy place in the universe for maintaining a truth-loving and truth-telling spirit, a place where there is no rational motive for either telling or believing a lie; and from this secure position they have reviled those who are laboring in another field, where to tell the truth, to believe and act in harmony therewith may mean, poverty, shame, persecution, or death. Until the men of science make good their spirit and method in the citadel of contentious politics they remain in the

infantile or kindergarten stage of development. It requires no high moral character to excel in physics. But to excel in the building of a righteous state involves a corresponding excellence in character. Only those who have the will to render social justice can have the mind to perceive the truth in social phenomena. Until the two fields of science have become harmonized in a righteous state there can be no fully grown men and women in either field. Science is strong where politics is weak; politics is strong where science is weak; each has need of the other.

There must be agreement in definitions, else there can be no proper debate. For a brief period forty-four years ago agreement had apparently been reached on the fundamental principles of free government, and upon general lines of policy. This proved to be illusive. The civil war was not really over. The last troops were withdrawn from the south in 1876. Bitter hostilities had been aroused and prejudice reestablished. Men were driven to the polls by the million by appeals to prejudice or fear. In the midst of the confusion a bipartisan system of government grew up engaged chiefly in transferring property from the rightful owners into the hands of the few. Many billions of dollars of ill-gotten gain became dependent for its security upon the ability of the political machine to carry elections upon false issues. Falsehood and deception in political controversy became institutional. To make a fair and candid statement, during the political campaign, as to the position of the opposite party was a thing not to be tolerated by the party committees. So soon as the so-called "bloody shirt" issue had lost its force, the republican machine was ready with the plea that England, having failed to destroy this country in one way, had formed a plot to ruin our industries by a system of free trade. This was followed by the plea that the peculiar brand of a protective tariff which republicans favor carries with it the potency of insuring prosperity. Even after the exposure of the fraud and injustice of the republican tariff which drove a leading senator into private life the old plea for the innate virtues of any sort of a republican tariff has been revamped and utilized in the late campaign. The principle, however, still holds that there can be no enlightening debate

unless there is agreement upon clearly defined grounds of difference.

The difference may be clearly defined and yet may be of such a character as to exclude debate. Nothing can be clearer than the distinction between a government imposed by force and a government achieved by the cooperation of citizens treated as equals. Yet between the holders of these opposing views there can be no debate because the difference involves a flat contradiction. Such a difference involves war and not debate. A labor organization whose program is the annihilation of the capitalist class means war also rather than debate. A capitalist class whose program involves the destruction of labor organization likewise indicates war. There must be common agreement as to the essential objects to be gained before there is a proper field for debate. Each must maintain a sympathetic attitude towards the other's point of view. Each must maintain the open mind and be ready to accept the other's conclusions if a preponderance of evidence is found in its support. One who argues against socialism should be in a state of mind to become a socialist if his arguments are effectively answered. It was this quality in scientific debate which was so impressive to those who first experienced it.

During the last half century there has been immense advance in the professed belief in democracy. Leaders of thought in all countries render at least lip-service to the cause of free government. The world is apparently committed to a trial of government by the people. As it has taken many thousand years to reach a conclusion in condemnation of despotism, there is no reason to believe that the competing system can be fully tried in less than one thousand years. Democracy incurs serious limitations on account of the presence of enemies to the system, who presume to take part in political debate. Despots have had a simple method of disposing of corresponding disturbers; they have killed or silenced them by force. For democrats to do that violates one of their fundamental principles; for in theory all have an equal right to participate in the government. But during the transition period it is extremely important that the up-

holders of democracy should fully appreciate their right for a fair trial. They cannot destroy fellow citizens who conscientiously believe in a government imposed by force, but they can exhort them to be honorable and refrain from disturbing opposition. A believer in despotism as such cannot properly take part in political debate in a democracy.

There is, however, this possible middle ground which such a citizen may hold. He may recognize the fact that democracy is going to be tried, and that it is entitled to a fair trial and that he may render honorable assistance to that end.

We have a right to assume that all who take part in American politics either believe in democracy or at least are favorably disposed to give it a fair trial. This furnishes ground for agreement on the main lines of public policy.

Our biparty system has served to foment discord and prevent agreement; it has created the appearance of disagreement where none existed. From the records of the voting in recent elections it would appear that a large proportion, if not a majority, of the voters have no distinct party affiliation. The times are again propitious, as they appeared to be forty-fours years ago, for the inauguration of a new and better order.

Again the political parties are subjected to radical readjustment, giving rise to an opportunity to get rid of former prejudices and misunderstandings. If party government is to continue, each party should be recognized as equally patriotic, equally devoted to the good of the country, and as having no other reason for existing except service to the country. Membership in a party does not imply divided loyalty. If one's party goes wrong loyalty to the party as well as loyalty to the country may call for the defeat of the party. As far as possible the parties should seek to eliminate disagreement on a variety of subjects, reserving as questions for discussion only those which Mr. Gladstone used to describe as "ripe for action." There should be no more dragnet political platforms whose object is the confusion of the voters. All political parties profess to have the good of the whole country as an object of endeavor; if they champion a particular interest they do it with the plea that the special interest

is in harmony with the general welfare. Political parties conducted in this spirit may exhibit all the admirable qualities which are observable in scientific debate, and in addition others of a higher moral character. A debate on an issue in biology is limited to the ascertainment of the truth about some external phenomena. A political debate generally pertains to policies involving gain or loss to individuals. Conducted in the scientific spirit the debate promotes a willingness to surrender individual gain for the sake of the general welfare. Political parties themselves, if they are to be justified, are teachers of self-sacrifice for a worthy object. This ideal is not at all beyond attainment. Parties in Switzerland are already fulfilling the ideal. But there parties do not govern; they simply assist the body politic in reaching agreement on public policy. The field is yet open for Americans to take a leading place in the more difficult task of maintaining the scientific spirit in the conduct of parties which assume the responsibility of governing.

PAN-TURANISM

T. LOTHROP STODDARD

In practical politics the vital thing is not what men really are, but what they think they are. This simple truth, so often overlooked, is actually of tremendous import. It gives the key to many a riddle otherwise insoluble.

The European war is a striking case in point. That war is very generally regarded as being one of "race." The idea certainly lends to the struggle much of its bitterness and uncompromising fury. And yet, from the genuine racial standpoint, it is nothing of the kind. Ethnologists have proved conclusively that, apart from certain palaeolithic survivals and a few historically recent Asiatic intruders, Europe is inhabited by only three stocks: (1) the blond, long-headed "Nordic" race, (2) the brown, round-headed "Alpine" race, (3) the brunet, long-headed "Mediterranean" race. These races are so dispersed and intermingled that every European nation is built on at least two of these stocks, while most are compounded of all three. Strictly speaking, therefore, the present European war is not a race-war at all, but a domestic struggle between closely knit blood-relatives.

Now all this is known to most well-educated Europeans. And yet it has not made the slightest difference. The reason is that, in spite of everything, the Europeans believe that they fit into an entirely different race-category. They think they belong to the "Teutonic" race, the "Latin" race, the "Slav" race, or the "Anglo-Saxon" race. The fact that these so-called "races" simply do not exist but are really historical differentiations, based on language and culture, which cut sublimely athwart genuine race-lines,—all that is quite beside the point. Your European may apprehend this intellectually, but it will have no effect upon his conduct. In his heart of hearts he will still believe himself a Latin, a Teuton, an Anglo-Saxon, or a Slav.

For his blood-race he will not stir: for his thought-race he will die. For the glory of the dolichocephalic "Nordic" or the brachicephalic "Alpine" he will not prick his finger or wager a groat; for the triumph of the "Teuton" or the "Slav" he will give his last farthing and shed his heart's blood. In other words: "Not what men really are, but what they think they are!"

Now, why all this? Why, in contemporary Europe, should thought-race be all-powerful, while blood-race is impotent? The reason is perfectly clear. Modern Europe's great dynamic has been nationality. Until quite recent times "nationality" was a distinctly intensive concept, connoting approximate identity of culture, language and historic past. It was the logical product of a still relatively narrow European outlook. Indeed, it owed its very existence to the disappearance of a still narrower outlook which had contented itself with the regional, feudal and dialectic loyalities of the Middle Ages. But the first half of the nineteenth century saw a still further widening of the European outlook to a continental or even to a world horizon. At once the early concept of nationality ceased to satisfy. Nationality became extensive. It tended to embrace all those of kindred speech, culture and historic tradition. Obviously a new terminology was required. The key-word was presently discovered—"race." Hence we get that whole series of "race"-phrases—"Pan-Germanism," "Pan-Slavism," "Pan-Angleism," "Pan-Latinism," and the rest. Of course these are not racial at all. They merely signify nationalism brought up to date. But the European peoples, with all the fervor of the nationalist faith that is in them, believe and proclaim them to be racial. Hence, so far as practical politics is concerned, they are racial and will so continue while the national dynamic endures.

This new development of nationalism (the "racial" stage as we may call it) was at first confined to the older centres of European civilization, but with the spread of western ideas it presently appeared in the remotest and most unexpected quarters. Its advent in the Balkans quickly engendered those fanatical propagandas, "Pan-Hellenism," "Pan-Serbism," etc., which turned that unhappy region first into a bear garden and latterly

into a witches' sabbath. Before the close of the last century, nationalism had patently passed into Asia. The "Young Turk" and "Young Egyptian" movements, the "Nationalist" stirrings in Persia and India, and the Chinese revolution, are unmistakable signs that Asia is in the throes of the first phase of national self-consciousness.

But of late years numerous symptoms proclaim the fact that in Asia also the second or "racial" stage of nationalism has begun. This is strikingly illustrated by the recent course of events in the Mohammedan world. About a hundred years ago the Wahabi revolt in Arabia inaugurated that vast politico-religious movement known as the Mohammedan Revival. By the closing decades of the nineteenth century it had reached every corner of Islam, while a simultaneous pressure from aggressive, land-hungry Europe had given it a bitterly anti-European complexion. Hence close observers of eastern affairs have descanted for many years on "Pan-Islamism" and have warned us of the impending Jihadd or "Holy War" against the European west. And yet, in 1914, under highly exciting provocation and extremely favorable circumstances, the Jihadd did not "come off." Of course we are all familiar with the stock explanations for its non-appearance, and doubtless these had their weight. But one reason, though never mentioned, probably had a great deal more to do with the Holy War fiasco than is generally supposed: the dissolving effect of the new spirit of Asiatic nationalism upon Islamic unity. Just as the gospel of nationality which came to Europe with the Renaissance disrupted the Catholic unity of the Middle Ages and made crusades impossible, so that same gospel today seems to be relaxing the bonds of Islamic solidarity and transforming the true believers into patriots first and Moslems afterwards.

This tendency is especially evident in the recent relations of the two chief Mohammedan peoples of the Ottoman empire, the Turks and the Arabs. Arab and Turk have never gotten on really well together. Their racial temperaments were too incompatible for that. Still, in former times their common Islamic faith and their common contempt and hatred of the

infidel united them against the Christian world, whatever the state of their domestic relations. But throughout the present century ominous signs of disruption have been in evidence. In the two portions of the Arab world most open to western ideas (Syria and Egypt), Arab nationalist movements appeared years ago, and the leaven has since been permeating the whole Arab world. In great part these movements have been specifically directed against the menace of European domination, but they are also self-consciously nationalist and as such hostile to the ruling Turk. Indeed, within the last few years, Arab nationalism seems to have reached the "racial" stage. Many of its leaders today dream of a great Arab Empire, embracing not only the ethnically Arab peninsula homeland, Syria, Mesopotamia and Egypt, but also all the Arabized races of North Africa and the Sudan. With such a temper it is not surprising that the call to the "Holy War" from Turkish Stambul in November, 1914, found the Arab world half-hearted or cold. It also does much to explain the recent revolt of the Shereef of Mecca which today threatens Turkish rule throughout Arabia with complete destruction.

This rapid growth of Arab national consciousness was undoubtedly stimulated by the hostile reaction of the corresponding development which had been taking place in the Turkish world. We all remember the startling growth of "Young Turkey," the amazing transformation of the Ottomans from old-fashioned Moslems docilely submissive to the absolute sultan-caliph into self-conscious patriots eager to replace the theocratic despotism of Abdul-Hamid by an Ottoman national state with the Turkish language and culture supreme over and absorbing all the rest. That is merely the familiar nationalist "first stage." But we should also note that Turkish nationalism, like Arab nationalism, has already reached the second or "racial" stage of development. In fact, its growth has here been truly extraordinary. It has already passed the bounds of what might strictly be termed "Pan-Turkism" and has now arrived at the truly momentous concept known as "Pan-Turanism."

The Ottoman Turks do not stand racially alone in the world.

Right across northern Europe and Asia, from the Baltic to the Pacific and from the Mediterranean to the Arctic Ocean, there stretches a vast band of peoples to whom ethnologists have assigned the name of "Uralo-Altaic race," but who are more generally termed "Turanians." This group embraces the most widely scattered folk—the Ottoman Turks of Constantinople and Anatolia, the Turcomans of Central Asia and Persia, the Tartars of South Russia and Transcaucasia, the Magyars of Hungary, the Finns of Finland and the Baltic provinces, the aboriginal tribes of Siberia, and even the distant Mongols and Manchus. Diverse though they are in culture, tradition, and even physical appearance, these peoples nevertheless possess certain well-marked traits in common. Their languages are all similar, and, what is of even more import, their physical and mental make-up displays undoubted affinities. They are all noted for great physical vitality combined with unusual toughness of nerve-fibres. Though somewhat deficient in imagination and creative artistic sense they are richly endowed with patience, tenacity and dogged energy. Most of them have displayed extraordinary military capacity together with a no less remarkable aptitude for the masterful handling of subject peoples. The Turanians have certainly been the greatest conquerors and empire-builders that the world has ever seen. Attila and his Huns, Arpad and his Magyars, Isperich and his Bulgars, Alp Arslan and his Seljuks, Ertogrul and his Ottomans, Genghis Khan and Tamerlane with their "inflexible" Mongol hordes, Baber in India, even Kubilai Khan and Nurhachu in far-off Cathay: the type is ever the same. The hoof-print of the Turanian "man on horseback" is stamped deep all over the palimpsest of history.

Glorious or sinister according to the point of view, Turan's is certainly a wondrous past. Of course one may query whether these diverse peoples really do form one genuine race. But, as we have already seen, that makes no practical difference. Possessed of kindred tongues and temperaments and dowered with such a wealth of soul-stirring tradition, it would suffice for them to think themselves racially one to form a nationalist dynamic of truly appalling potency.

Until about a generation ago, it is true, no signs of such a movement were visible. Not only were distant stocks like Magyars and Finns quite unaware of any common Turanian bond, but even obvious kindred like Turks and Turcomans regarded one another with almost complete indifference. It was the labors of western ethnologists that first cleared away the mists which enshrouded Turan. Particularly was this true of the Hungarian ethnological school. The Magyars, though deeply permeated by western culture, have never forgotten their Asiatic origin and have always felt rather lonely in the midst of Aryan Europe. This feeling was naturally intensified by the nationalist waves which swept over Europe during the nineteenth century, emphasizing as these did ethnic differences and sharpening existing lines of cleavage between the peoples. Accordingly the Magyars instinctively turned to seek out their long lost kindred, and the researches of Hungarian scholars, particularly those of the great orientalist Arminius Vambèry, presently disclosed the unexpected vastness of the Turanian world.

This soon acquired a much more than local significance. The works of Vambèry and his colleague spread far and wide through Turan and were there devoured by receptive minds already stirring to the obscure breath of a new time. The normality of the Turanian movement is shown by its simultaneous appearance at such widely sundered points as Turkish Constantinople and the Tartar centers along the Russian Volga. Indeed, if anything, the leaven began its working on the Volga sooner than on the Bosporus. This Tartar revival, though almost unknown to the west, is one of the most extraordinary phenomena in all nationalist history. These Russian Tartars, once lords of the land, though long since fallen from their high estate, have never vanished in the Slav ocean. Although many of them have been four hundred years under Muscovite rule they have stubbornly maintained their religious, racial and cultural identity. Clustered thickly along the Volga, especially at Kazan and Astrakhan, retaining much of the Crimea, and forming a considerable minority in Transcaucasia, the Tartars constitute distinct enclaves in the Slav empire, widely scattered but indomitable.

The first stirrings of national self-consciousness among the Russian Tartars appeared as far back as 1895, and from then on the movement grew with astonishing rapidity. The removal of governmental restrictions at the time of the Russian revolution of 1904 was followed by a regular literary florescence. Streams of books and pamphlets, numerous newspapers and a solid periodical press, all attested the vigor and fecundity of the Tartar revival. The high economic level of the Russian Tartars assured the material sinews of war. The Tartar oil millionaires of Baku here played a conspicuous rôle, freely opening their capacious purses for the good of the cause. The Russian Tartars also showed distinct political ability and soon gained the confidence of their Turcoman cousins in Russian Central Asia. The first Duma showed a large Mohammedan group so enterprising in spirit and so skillfully led that Russian public opinion became genuinely uneasy and Tartar influence in Russian parliamentary life was thereafter diminished by summary curtailments of Mohammedan representation.

Although the Mohammedans of Transcaucasia have displayed unmistakable signs of fanaticism, the Tartars of European Russia, scattered enclaves as they are amid the vast bulk of Muscovite Slavism, carefully refrain from any overt exhibition of separatism or disloyalty. Nevertheless, many earnest spirits have gone forth to seek a freer and more fruitful field of labor in Turkish Stambul where the Russian Tartars have played a great part in the Pan-Turanian development within the Ottoman Empire. In fact, it was a Volga Tartar, Yusuf Bey Akchura Oglu, who was the real founder of the first Pan-Turanian circle at Constantinople.

Up to the Young-Turk revolution of 1908, Pan-Turanism was somewhat under a cloud at Stambul. Abdul-Hamid had an instinctive aversion to all national movements. He pinned his faith on Pan-Islamism, and furthermore was much under Arab influence. Accordingly, the Pan-Turanians, while not actually persecuted, were decidedly out of favor. With the advent of Young-Turk nationalism to power, however, all was changed. The Ottomanizing leaders of the Committee of Union and

Progress listened eagerly to Pan-Turanian preaching, and it is safe to say that all the chief men among the Young Turks have been for years affiliated with the Pan-Turanians. The present Pan-Turanian leader is the able publicist Ahmed Bey Agayeff; also, be it noted, a Russian Tartar. His well-edited organ, *Turk Yurdu* (*Turkish Home*), penetrates to every corner of the Turco-Tartar world and exercises great influence on the development of its public opinion.

Although leaders like Ahmed Bey Agayeff have long seen the entire Turanian world from Finland to Manchuria as a potential whole, their practical efforts were until very recently confined to the closely related Turco-Tartar segment; that is, to the Ottomans of Turkey, the Tartars of Russia, and the Turcomans of Central Asia and Persia. Since all these people were also Mohammedans, it follows that this propaganda had a religious as well as racial complexion, trending indeed in many respects towards Pan-Islamism. In fact, even disregarding the religious factor, we may say that, though Pan-Turanian in theory, the movement was at that time in practice little more than "Pan-Turkism."

It was the second Balkan war of 1913 which really precipitated full-fledged Pan-Turanism. That war brought a new recruit into the Turanian camp—Bulgaria. The Bulgarians have until yesterday been classed as Slavs. They are in reality of mixed origin. The primitive Bulgars were a Turanian tribe who, away back in the Dark Ages, conquered the unorganized Slavic hordes, recently migrated south of the Danube, and settled down as masters. Unlike their cousins the Magyars, these old Bulgarians were absorbed by their more numerous subjects, losing their speech and racial identity. But, like most Turanian stocks, the blood was a potent one, for they left behind them far more than their name. The resulting amalgam was stamped with marked Turanian physical and mental characteristics which set the new Bulgarians quite apart in the category of "Slav" peoples. This fact came out strongly after the Russo-Turkish war of 1877. Russia, having freed the Bulgars from the Turkish yoke, expected them to become a mere Pan-Slav outpost, the

docile exponent of Russia's Balkan will. Russia was soon bitterly undeceived. From the very hour of their liberation the Bulgarians displayed an intense and aggressive particularism, and showed themselves emphatically Bulgars first and Slavs a long way afterwards. When sharply reminded of their "duty" to Pan-Slavism, the Bulgarians answered tartly that they did not care a fig for Pan-Slavism except in so far as Pan-Slavism coincided with Bulgarian national interest. Thereupon Russia, deeply incensed, transferred her favor to the Serbs, a people with a strong Slav consciousness and hence amenable to Russia's Pan-Slav policy. But this merely widened the breach with the Bulgars, who now turned away from their former protector and sought support from Russia's Balkan rival, Austria-Hungary. The ulcerating humiliations of the second Balkan war at the hands of the hated Serbs with Russia's undisguised approval snapped the last links with the historic past and threw the Bulgars full into the arms of the Teutonic Powers and their Turkish ally. The manner of Bulgaria's entrance into the present war was thus practically a foregone conclusion.

But this chapter of European politics had in it much more than mere political significance. "Call us Huns, Turks, Tartars, but not Slavs!" exclaimed a Bulgarian leader immediately after the signing of the disastrous Treaty of Bucharest. The subsequent course of events proves that this trenchant phrase was a true reflection of Bulgarian public opinion. A few months later came the reconciliation with the hereditary Turkish enemy. This was not the abnormal *volte face* which might at first sight appear. Even before the Balkan wars many Young-Turks had favorably distinguished the Bulgars from the other Balkan peoples, while Pan-Turanian publicists had hailed this folk as "Slavized Turanians." The nightmare of Bucharest now brought the Bulgarians into a similar frame of mind. What happened was, in fact, merely a shifting of balance in the national psychology. Hitherto, latent Turanian tendencies had been submerged or inhibited by a dominant Slav consciousness. Now the scales swung the other way, and emphasis began to be laid on Turanism. It is apparently not too much to say that since their entrance

into the European war the Bulgars have formally renounced Slavism and have embraced the Turanian ethnic gospel.

This fraternization with their southern neighbors was powerfully aided by the influence of another Turanian people to the north. The Magyars, as we have seen, had long been conscious of their kinship with the Turks. The evil memories of Ottoman conquest had quite died away, and throughout the nineteenth century Magyar opinion was increasingly Turcophil. After the suppression of the Hungarian revolution in 1849 it was to Turkey that Louis Kossuth and the other Hungarian leaders fled, and the warm welcome and resolute protection there accorded them greatly strengthened the ties of sympathy between the two peoples. During the Russo-Turkish War of 1877 Hungary was violently pro-Turkish, and a magnificent sword of honor then presented by the Magyars to the Sultan aroused comment throughout Europe. The labors of Magyar publicists and statesmen have had a great deal to do with the present Turco-Bulgar intimacy.

The political potentialities of the *rapprochement* between these three contiguous peoples are truly extraordinary. Should this *rapprochement* prove lasting we shall witness the erection of a solid block, stretching from the middle Danube to Mesopotamia, bound together by that most solid of bonds, racial self-consciousness. And there is no inherent reason why it should not be lasting. The group has a common deadly enemy—Russia, whose triumph would doom all of its members to virtual subjugation. Should the present plans for a great Central European *Zollverein* mature, the tie of self-preservation will be powerfully supplemented by that of economic interdependence. And then, what a revolution in traditional ideas and old political preconceptions. Imagine the effects of Bulgarians ceasing to think of themselves as Slavs, Magyars as Western Europeans, Turks as primarily True Believers; but instead, all three considering themselves fellow-Turanians.

To Russia especially the prospect is full of ill-omen. The Volga region and the Crimea are, as we have seen, dotted with Tartar enclaves, nearly 5,000,000 strong. In Transcaucasia are

2,000,000 more. In Russian Central Asia (not to mention Chinese Turkestan), stands a compact block of 7,000,000 fanatical Turcomans. All these peoples are today consciously stirring to the leaven of Pan-Turanism. But Russia contains many other Turanian elements—the Finns of Finland and the Baltic provinces, the unassimilated Finnish tribes of the Russian North, the natives of Siberia, and in the Far East the Mongols and the Manchus. Indeed, the Russian people itself is largely an ethnic compost sprung from the union of Slav colonists with indigenous Finnish peoples. In fact, from a certain point of view, the whole Russian Empire may be conceived as a Slav alluvium laid with varying thickness over a Turanian sub-soil. Granting for the sake of argument that the Finnish and Mongol elements will never awaken to a Turanian race-consciousness, the presence in both European and Asiatic Russia of so many Turco-Tartar "Turania irredenta" may yet raise new political and ethnic problems which will tax Russian statesmanship to the full.

Pan-Turanian thinkers have assuredly evolved a body of doctrine which should appeal powerfully to Turanian psychology. Their hopes for the race-future are certainly grandiose enough. Emphasizing as they do the great virility and nerve-force everywhere patent in Turanian stocks, these men see in Turan the dominant race of the morrow. Zealous students of western evolutionism and ethnology, they have evolved their own special theory of race grandeur and decadence. According to Pan-Turanian teaching, the historic peoples of Southern Asia—Persians, Egyptians and Hindus—are hopelessly degenerate. As for the Europeans, they have recently passed their apogee, and, exhausted by the consuming fires of modern industrialism, are already entering upon their decline. It is the Turanians, with their inherent virility and steady nerves unspoiled by the wear-and-tear of western civilization, who must be the great dynamic of the future. Some Pan-Turanian thinkers go so far as to proclaim that it is the sacred mission of their race to revitalize a whole senescent, worn-out world by the saving infusion of regenerative Turanian blood.

Now most westerners will probably see in all this merely the wild figments of a disordered imagination. And, of course, Pan-Turanism may vanish like the mirage of the desert, leaving not a wrack behind. But, considered soberly and dispassionately in the light of historic precedent, dare any one assert dogmatically that it will thus end? Before Mohammed the countless tribes of Arabia, notoriously the "Jackals of the East," had vegetated from time immemorial in anarchic obscurity. Kindled by Islam's Promethean spark, they swept like a roaring forest fire over half the earth. There are men still living who saw in youth a Germany so rent by particularistic strife that they would have deemed a madman him who should then have foretold the mighty Germany of 1914, stung to action by the most grandiose vision of power and glory since Imperial Rome.

Others may object that, whatever Pan-Turanism's latent possibilities, they are wholly dependent upon the outcome of the present war. But is even this a certainty? For some movements the ringing of disaster's hammer upon the anvil of humiliation is the very thing needed to forge them into tempered steel. It was the Napoleonic despotism which engendered modern Germany. It was the Austrian "whitecoat" who fashioned modern Italy. It is the present war which is apparently welding into being a genuine "British Empire."

Turan's destiny is today close-veiled from the eyes of men. But so tremendous are its latent potencies that they well deserve our close consideration. One thing is sure: even a partial realization of those grandiose dreams would shake the fabric of the present world.

THE CONTROL OF FOREIGN RELATIONS

DENYS P. MYERS

There is criticism of the conduct of foreign policy and the methods of diplomacy. Some of it is definite, some nebulous. It is either in very general terms, or else directed at isolated and specific diplomatic decisions. The feeling of dissatisfaction is widespread, and it is apparently safe to conclude that where there is a great deal of smoke there must be some fire. A people, like a physician's patient, may be certain there is something wrong without knowing what or where it is; or they may be misinformed, or badly informed.

It has been very popular in some quarters to make the diplomat the scapegoat of the European war, to characterize him simply as an intriguer pulling wires neither wisely nor too well. Especially is it urged that the diplomat as a trustee of the people's welfare has been recreant to his trust, and that things can be righted by the simple process of having legislative bodies take diplomatic decisions. The suggested remedy is apparently attractive to parliamentarians, some sociologists and those living in states where parliamentary action on treaties is required.

Very little has been said about two important conditions always faced by the conductor of foreign affairs: He inevitably is opposed to the proponents of other states, so that he is seldom an entirely free agent; and, the problems with which he deals are usually of no one's choosing, being problems arising for the most part from coincidence or causes beyond his control. The line of diplomatic progress toward any goal can seldom be straight because the unforeseen is constantly happening to modify conditions. However unpromising his material, the conductor of foreign affairs must act in many cases against his desires and frequently in conditions entirely beyond his control

and which he personally regrets. The diplomat is surely entitled to have this said on his behalf.

This paper will consist largely of examining the actual conditions under which diplomatic work is done and the exact relation of government to foreign relations. It will be essentially an objective study of things as they are, with the purpose of finding positively the things that ought not to be. The world alone is the field of study, special conditions in any state being disregarded unless typical.

It should be kept clearly in mind that the whole problem of the control of foreign relations is a dual problem in constitutional and international law. The whole machinery of the conduct of foreign relations is determined by the municipal constitution and frequently is part of the constitution; but the action of the machinery manifests itself on the international plane. It is in the international field that war occurs, that foreign policies clash, that diplomacy feels its way and reaches its decisions, that treaties solve or stir up problems. Yet all these have their origin within individual states and are given direction and character by municipal governmental machinery that is fixed as to form and which, like any machinery, tends to operate of its own inertia. This condition requires that any such study as the present one shall deal almost equally with the internal structure of the state and its external activities. Difficulties abound. Properly to understand the municipal organs for the conduct of foreign relations a preliminary examination of the structure of states must be attempted, but political scientists have chiefly devoted themselves to detailed study of a few states rather than to a study of principles in all states. International law, on the other hand, has emphasized practical principles and theory without venturing far into the philosophy of international relations. Writers of divers sorts who have attempted a philosophy of international relations have customarily written without proper knowledge or else for a preconceived purpose. It cannot be hoped, therefore, that this study will prove more than an honest attempt to define the content of foreign relations, to sketch broadly their conduct and to offer some tentative conclusions.

ELEMENTS OF FOREIGN RELATIONS

Before advancing further into the subject it will be well to get a clear idea of the terms we use. It is necessary to understand what we mean by foreign relations and foreign affairs, diplomacy, foreign policy, international law, and treaties; for they are to a great extent overlapping terms and the content of one is frequently made up of elements of the others.

1. Foreign relations, it may seem superfluous to say, constitute the intercourse between states as such. The synonymous phrase, foreign affairs, apparently has currency because "*affaires*" is the proper word in the French language to indicate government business and, French being the language of diplomacy, and continental states speak of departments of foreign affairs. In Spanish the phrase is "*relaciones exteriores*," and it has naturally become current in Latin America. The only place where the two terms have come into juxtaposition in the same government is in the congress of the United States, where the senate has a committee on foreign relations and the house of representatives a committee on foreign affairs. In English, "foreign relations" has perhaps a wider connotation than "foreign affairs," but the differentiation between the senate and house committees was for purposes of convenience. The difference in name saved, among the initiated, the trouble on each occasion of specifying "of the senate" or "of the house."

2. Diplomacy is the management of foreign relations, the agency by which they are conducted. By the dictionary, diplomacy is defined as the art of negotiation, thus emphasizing the method employed. A better definition is that of Count de Garden:

"This expression, which has been in use in court language since the end of the eighteenth century, in its most extended meaning signifies the science of the respective relations and interests of states, or the art of conciliating the interests of peoples among themselves; and, in a more restricted sense, the science or art of negotiations. Etymologically it comes from the Greek work διπλῶμα, duplicate, double or copy of an act emanating from the prince, of which the original is retained . . . .

"Diplomacy embraces the entire system of the interests which spring from the relations established between nations; their respective safety, tranquility and dignity are its object, and its immediate and direct purpose is, or at least ought to be, the maintenance of peace and good harmony between powers.

"The principles of this science have their source in international law, or the positive law of nations, which constitutes the law common to European peoples; this law presents the whole of the rules admitted, recognized, sanctioned by custom or by conventions, and they fix the rights and duties of states in peace or war . . . .

"Comprised within the limits assigned to the domain of diplomacy are all the conditions a nation is concerned with pursuing in order to assure its preservation, its independence and its prosperity, and to guarantee itself against every enterprise from abroad."[1]

A shorter statement is:

"The elementary object of diplomacy in all countries and ages may be roughly described as the maintenance of international relations on terms of mutual courtesy, forbearance and self-control, such as regulate the intercourse of individuals in private life, the reduction to a minimum of causes of international friction, the actual avoidance or the indefinite postponement of recourse to war for the settlement of disputes between independent states."[2]

3. Foreign policy is an attitude toward other states, toward persons or toward things, assumed to be for the originating state's general good. Again quoting Garden:

"The different parts of diplomacy must be viewed from two principal points of view: one positive, fundamental and juridical, the other abstract, hypothetical, variable and originating solely in policy. In the most general sense policy means the theory of the ends of civil society, of the state, prescribed or permitted by practical reason, and of the means which experi-

[1] Garden, *Histoire Générale des Traités de Paix*, 1, lxxxii–iii. The same text appears in his *Traité de diplomatie*.

[2] Escott, *History of British Diplomacy*, p. 1. London, Unwin, 1908.

ence has demonstrated as most proper to lead certainly to those ends. Submitted to the fluctuation of circumstances, it does not admit absolute principles, unchanging maxims; so, whether prince or minister, one becomes a statesman, in a word, learns how to govern, only by the management of affairs; and in this imposing, immense career it is the study of the world stage that fertilizes genius. There are encountered the great difficulties and the niceties of diplomacy; there fixed rules vanish, and, as in the fire of battle, genius remains abandoned to its own thoughts. Put on this plane, diplomacy becomes like a transcendent maneuvering of which the entire globe is the theatre, where states are army corps, where the lines of combat change unceasingly, and where one never knows who is a friend, and who is an enemy. Because everything is to be found out does not mean there is not much to be known. The bulk of what must be known is immense; but it is baggage that is good only when carried on the march, to render observation more clear and sure, and from which it will vainly be sought to make a principle emerge. . . . . It is necessary here to have penetrated to the bottom of the designs of cabinets before undertaking any calculation, to decipher them carefully and often with more skill than they themselves have used, so as to reconcile unforeseen plans to them, to appreciate their weak points and their interest, to possess the secret of their resources and their strength, to be in a position according to circumstances to disclose views calculated either to facilitate alliances or to defeat them or to ruin those already concluded; to have constantly in mind all the previous actions of states and of their treaties, broken or subsisting. It is a political labyrinth in the midst of which ability alone is capable of moving with ease and without being smothered by detail."[3]

The talented Frenchman, the pedagogue of nineteenth century diplomacy, defined here the classic conception of policy based on the theory of inevitable enmities, which he considered operative as late as 1860. But another spirit and theory of

[3] Garden, *op. cit.*, I, xci–xcii.

the good of the state are now familiar. The feeling has grown that it "is a poor diplomacy [policy] which can advance only when protected by guns."[4] A belated discovery that a state has duties as well as rights has served to point a way in policy to fostering friendships and to coöperating where possible. Talleyrand in his famous memorandum of November 25, 1792, describing the policy France ought to follow, described the policy which alone any state dares today to proclaim:

"The only real, profitable and reasonable leadership—that which alone becomes free and enlightened men—consists in being master at home, and in never entertaining the ridiculous pretension of being other people's master . . . . For states, as for individuals, the real way to get rich is, not by conquering and invading foreign countries, but by improving your own . . . . All increase of territory, all the gains of force or cunning, long associated by time-honored prejudices with the idea of rank, leadership, national coherence and superiority among the nations of the world, are but the cruel mockery of political folly and false estimates of strength, increasing the expense and complications of government and diminishing the well-being and safety of the governed, for the sake of the transient advantage or vanity of those in power."[5]

The declared spirit of foreign policy has long emphasized the ideas expressed by Lord Granville:

"In the opinion of the cabinet, it was the duty and interest of a country such as Great Britain, having possessions scattered over the whole globe, and finding itself in an advanced state of civilization, to encourage progress among all other nations. But, for this purpose, the foreign policy of Great Britain should be none the less marked by justice, moderation, and self-respect, and avoid any undue attempt to enforce her own ideas by hostile threats."[6]

[4] Deputy Vollmar in the German Reichstag, *Berichte des Reichstags*, March 13, 1897, p. 5170C.

[5] Cited in note 2 to Letter C, *Unpublished Correspondence of Prince Talleyrand and Louis XVIII.*

[6] Lord Edmond Fitzmaurice, *Life of Lord Granville*, I, 49.

4. International law is an element at times controlling and at times only coloring foreign affairs, diplomacy and foreign policy. International law, is, by definition, that law which applies in practice between nations.[7] Of the whole body of ideas that are ordinarily called international law, some are universally practiced and undisputed; some are generally recognized and increasing in mandatory force; some are becoming precedents and tending toward phrasing in definite rules; and some are dependent solely upon the reasoning processes of writers. Any international question precisely and primarily involving any of these categories of rule will be controlled or colored by that fact. International law varies between being the traffic policeman on the highway of foreign relations and a mere guidepost indicating the route to follow. It is an instrument of diplomacy, but distinct from and frequently antagonistic to policy.

5. Treaties are contracts between states. Perhaps the best definition is that of Louis Renault, who defines a treaty as "the agreement of two or more states, to establish, regulate or destroy a juridical bond." Unless their subject matter is a codification by substantially all the states of rules in international usage or for the guidance of all, treaties are not international law. Their much-talked-of sanctity is the sanctity of the contract, not that of the moral or universal law. Treaties may be political or non-political. Of political treaties, Feodor de Martens asserted in 1899:

"Actually the reciprocal rights and obligations of the states are defined, in a large measure, by the whole of what is called the political treaties, which are nothing else than the temporary expression of the fortuitous and transitory relations between various national forces. These treaties confine the liberty of action of the parties, as long as the political conditions under which they were drafted remain unchanged. If these conditions are altered, the rights and obligations flowing from these treaties must be necessarily changed. In general, the disputes arising out of political treaties chiefly concern not so much a

[7] See Alpheus H. Snow, *The Law of Nations*, 6 *American Journal of International Law*, 890.

difference of interpretation of such or such a norm as the changes to be brought to this norm or its complete repeal."

As to non-political treaties, of which we shall have much to say, they are also of a temporary character. They result from the emergence of practical questions of one type in quantity and are negotiated to give a rule of action by which to conduct public business concerning a particular class of international relations.

All treaties may be said to be manifestations of minor policy. Showing the direction a state's international relations take, treaty contracts afford evidence of the character of the state. Treaties in foreign relations may be likened to that part of dough which has become fixed in form and character by being baked into loaves.[8]

ORIGIN OF FOREIGN RELATIONS

The historical origin of foreign relations as part of the business of modern government has colored their conduct. When the Italian free cities in the middle ages began to erect into a system the sending of diplomatic missions, they acted upon the fundamental impulse of all diplomacy, protection of the inter-

[8] Easily nine-tenths of all treaties are of non-political character. Computations from the published treaty volumes of all countries and of all times lead me to conclude that some 25,000 treaties are in existence, of which about two-fifths are in force. The last century has produced more treaties than all the past, if an actual examination without actual count can be trusted. But if 10,000 treaties are now currently in force, not 500 of them are political. The rest—the great majority—are administrative or regulatory. To some extent many of these directly or implicitly have a political bearing, but inclusion of all such would not more than double the number of political treaties, those involving policy.

In a certain aspect, however, all treaties involve policy, because they do not constitute international law, which in conventional provisions is to be found only in a comparatively few declarative documents multinationally negotiated and generally signed and ratified. Every bipartite treaty records that two states have agreed on a rule between them. The tendency is for treaty provisions found satisfactory to be employed frequently and in the course of time to take on a similarity very close to identity. Extradition treaties illustrate the process, such conventions now practically conforming to one model; codification into an international convention being the next logical step, thus adding a chapter to positive international law.

ests of the state. But the conditions of the time gave character to the innovation. Military conditions alone prevailed in Europe and the Italians found themselves incapable of withstanding the ambitious secular rulers whose policy had hardened into a habit of seizing military control of Italy in order to bring physical pressure to bear on the papacy, when the Holy See periodically came to award the crown of the Holy Roman Empire. Not being able for reasons of strength to play an equal hand by force of arms in this game and being continually injured by the military incursions, the Italian city-states began fighting their defensive battles with wits rather than fists.

When diplomacy acquired a recognized place in the scheme of governmental affairs it was considered only as part of the mechanism of war, a method of gaining results without fighting or of securing greater results from the fighting. This character was inherent in diplomacy until various phases of foreign relations originating in peace problems came to be exclusively within the jurisdiction of the foreign office. Though the old character has not entirely departed from the diplomacy of the European system, it is true that diplomatic relations now tend to displace warlike relations as the normal and primary method of international intercourse. Today war is acknowledged as the outcome of policy and, as Clausewitz says, is simply a new phase of pursuing a political purpose. Diplomacy, the vehicle for conveying policy into realization, thus tends to become the master of war, to which it was originally servant.

Foreign affairs in their conduct are predicated everywhere on the legal position of war. The logic of political science is outraged by war's legal position in international relations, but its place cannot be denied. As things are—not simply because of the European conflict but inherent in the present fabric of civilization—war is legally recognized. It is the prosecution by force of a state's conception of its right, and no existent rule even attempts to impose boundaries for its initiation.[9] In

[9] The United States with thirty States, and Argentina, Brazil and Chile among themselves, have by treaty agreed not to declare war before legal inquiries and reports have been made. It is greatly to be hoped that the example will

practice some types of difference which once caused war do not now do so; but one may search in vain for any international declaration that obsolescence renders them illegitimate. War, then, is a status which is entered solely at a state's discretion. No state can turn to any rule during a dispute with another and definitely determine that this difference is not to be a *casus belli* in the judgment of the other. No guides except the impalpable ones of judgment and reasoning serve to indicate when diplomacy's sanction may be resorted to. This is a vicious condition due for a change, but nevertheless a real one not to be overlooked.

THE PURPOSE AND CONDITIONS OF DIPLOMACY

The fundamental purpose of all diplomacy and the conduct of all foreign relations is to forward the interests of the state beyond its own borders. The primary object of foreign policy is advantage to the state, not justice. This must, however, be understood in a wide sense of the word advantage, for it is profoundly true that permanent advantage for one state cannot be based on injustice to another. Yet the essential quality of diplomacy is cognate with that of debate, in which the advocates making the better argument win. The art of which Socrates spoke, of making the worse cause appear the better, is inherent in any negotiation.

Foreign relations have never been at this stage of depending solely upon advocacy. When permanent embassies first began to be employed by the Italian republics, the Justinian code and the arbitrament of the papacy furnished standards of experience and semi-judicial control. By the time the system of sovereign states, with which we are dealing, was established in

be generally followed, but these treaties do not now constitute international law, but only an international precedent. They, of course, bind the contractants where they are completed. The treaties in question, however, are not phrased so broadly as to include nonjusticiable and determined acts involving life or wilful and continuing acts, in which latter cases wilful acts offer no basis for investigation and continuing acts operate to free the aggrieved party from the treaty engagement after the first instance.

1648, Grotius had laid down the main lines of international law, which ever since has steadily become a stricter code for the guidance and control of diplomacy. The law—that is, the formulated experience of mankind—for nearly three centuries has played an increasingly important part in stabilizing international relations.

Criticism of the conduct of foreign affairs is, thanks to this circumstance, really directed at a comparatively small part of foreign office activities. A careful computation on the basis of the business done by the United States department of state indicates that ninety-five per cent of all matters coming up for action is settled directly on a basis of law. It is, of course, true that a larger proportion of American foreign relations fall within the fields of extradition, nationality, etc., than elsewhere; and that American policies are less complex than those of Europe. If we define such matters capable of direct settlement, according to rules already determined, as adjectival problems, it is probably safe to say that even in Europe three-fourths of all chancellery business is adjectival.

What of the rest? A considerable familiarity with the diplomatic documents of the last two centuries in Europe impels me to believe that probably fifteen per cent more of chancellery business differs from the above class only by reason of novelties in the problems raised. Instead of yielding to solution by a simple application of one or several determined rules, they are soluble only by a complex application of rules, by corollaries deduced therefrom, or even by projecting settled principles into new fields. These cases are those which advance international law. Adjectival cases add only a wealth of precedents; this fifteen per cent of novelties adds to the subject matter. They are substantive.

As an illustration may be mentioned the case of Don Pacifico. Don Pacifico was an English Jew resident at Athens in 1847. The Athenians were accustomed to burn "Judas Iscariot" in effigy at Easter, but that year the authorities attempted to prevent the ceremony owing to the presence of Charles de Rothschild in the city. The mob resented the action and attacked

and plundered Don Pacifico's house. He lodged a complaint with the Greek government, which took no action. Believing that a Jew would have little chance of justice in the Greek courts, he appealed to the British government, which made demands on Greece. On these being refused, an embargo was laid by Great Britain on Greek shipping. A commission eventually awarded damages to Don Pacifico. The rule that a state may protect its citizens abroad against denial of justice by resort to reprisals, if necessary, is deducible from the case; and, though much criticized, is followed in practice.

There remains some ten per cent of chancellery business to be identified. The reader cannot fail to recognize that the other ninety per cent as described is chiefly routine, involving the finding of facts and the application of rules to them. The remaining tenth may be said to involve policy. Policy is popularly undistinguished from law or administrative rules. A clearer conception of it is needed. Being an attitude of a state, assumed to be for its general welfare, there is nothing legal about it, though policies in the past have presided over the birth of legal relations, sometimes at the expense of what law aims at, justice. Real justice in practice consists of a balancing of adverse rights. Its test is found in the fact that the parties remain satisfied with its operation, or are unable to advance arguments strong enough to secure a revision in their favor. A purely moral idea of justice can have no decisive weight in practical affairs, because these affairs are not ideal.

Policy as a basis of action was evolved out of the painful efforts of the past to secure stability of international relations. It began at the wrong end, as did all political science. For not until the rise of nationality in France in the fifteenth century did there emerge the plain condition that international affairs can only be made stable by being based upon a series of healthy national communities, each working out its own destiny freely and developing coöperatively rather than by sheer rivalry. With the principle of sovereignty developed and insulating the national state for the process of free development, the political pundits again took up the problem by the wrong end. They

sought peace by making phrases instead of by searching their own souls. They generalized theories or courses of action from current conditions and erected the results of their ratiocination into systems of policy that were uniformly bad and had in common the very grave fault that every one was formulated on the *status quo*. Moreover, they were all personal products, not the products of principle. Time passed and rulers died; the *status quo* of the present became that of a past day, and new personalities asserted their right to try out their theories. Queerly enough, the inventors of systems operated on a theory of innate enmities, which is now obsolete by intervening disproof. They never seem to have stumbled upon the opposite idea, that friendships might be fostered and eventually might qualify all their international relations. The system of natural and perpetual enmities paled and faded from sight in the light of a rapidly revolving world. It is now obsolete.[10]

Policy in the nineteenth century became a more modest thing. It became more transitory, but above all it became more national. It ceased to be based on a mere aphorism and became subject to the tests of a forcible national motive and a present definite object. The older process was reversed. A present reason generated an attitude of the state, an aphorism usually being found to visualize the idea. In the earlier scheme it was sought to make current events conform to an aphorism put out in advance. Statecraft had acquired the sensible habit of carrying an umbrella when it rained and of putting on a straw hat when it was summer, instead of trying to order the political seasons according to preconceived notions. The new thesis allowed friendliness a certain opportunity to develop between storms.

Modern policies, then, are objective, and they are based on national interest. They are not in the least legal, and, in fact, are much colored by the recognized right of war, or self-help, in the actual scheme of international relations. Policy is,

[10] On this whole question see Mountague Bernard, *Systems of Policy*, pp. 60–109, in *Four Lectures on Subjects Connected with Diplomacy*, London, Macmillan and Company, 1868.

therefore, not wholly a deduction of what is due to the state by reason of its sovereignty and of its possessing the sovereign attributes of existence, independence, equality, domain and jurisdiction. Policy now, as in the past, becomes based in many instances on a confidence in military power. A puissant, progressive state may tend to foster its own interest by ostentatiously wearing its shining armor, while behind the action of most powerful states the element of military strength looms as one of the factors. A lesser state, however progressive, finds its definite policy in acting so correctly that its larger diplomatic antagonist may never find it with the handicap of a bad case to furnish an incentive for employing strength as a make-weight. "In our days the principles of law are conserved in the bureaus of the ministries of the great powers, which on each occasion take from their correspondence the dispatches and writings which justify them, and, if this justification is not very good, brute force always remains to them to make it accepted."[11]

Still further to understand our subject, it may be well to look at these three categories of questions in respect to their solubility. Unless policy is innate in the first two, they offer no dangers. Negotiators dealing with them are constrained to seek just solutions, if for no other reason than because the experience of the past as bodied forth in the rules of law or custom circumscribe the possibilities of selfish intention. As soon as diplomacy fails to solve them, methods of pacific settlement are normally called into operation.

With questions of policy it is different. They represent a philosophy or purpose of national life and may be entirely novel in application or reaction upon second parties. A policy affecting another state beneficially will tend to make it friendly and a coöperator; but if another state is affected adversely, friction is the more probable because neither state has much but sheer self-interest to support its claim. In these matters a state is groping its way, and even so astute a statesman as Bismarck scored most of his diplomatic successes by agility of mind

[11] Belisario Porras, delegate of Panama to Second Peace Conference, 2 *Deux. Conf.*, 336.

rather than by the overpraised policy of "blood and iron," which in the European arena was largely bluff.

It is eminently fitting that policies in their essentials should be national, and it is therefore desirable that parliament should know of them. Chancelleries in establishing policies initiate long commitments of uncertain ramifications. They will sound more in justice and be closer to actual national aspirations if some parliamentary review of them is had; and, with such a review, mere political intriguing will be at a disadvantage. Experience has, however, shown that parliamentary discussion is a lame and uncertain obstacle to intrigue, and that a parliamentary disposition to discuss policies tends to decline.

Two systems of handling them exist. States dealing with foreign affairs according to the American plan interpose the parliament as a consenting party to treaties, this co-existing with the election of executives for a definite period. As a matter of fact, in all such states there are policies purely executive, which never come before any part of the parliament. Side by side with the European plan of executive treaty ratification is a system of interpellations and votes of confidence, which are likely to throw a government out of power. On the whole, it would seem that the European system is the more direct. But it is true that not all Europe has the vote-of-confidence system.

FOREIGN RELATIONS IN GOVERNMENT

There is more representative character in foreign affairs than is commonly believed. The contrary opinion is due to an exaggerated conception of the legislative department of government. In the actual constitutional conditions of the present, it is not true that the legislative department represents the people in any more real sense than the executive department. It is only true that the representation is ordinarily more direct. Speaking generally, the system is that the people select by vote a legislature, the dominant party in which sets up the executive department of the government of the moment. The two stand or fall together, and to believe that the executive is lacking in

responsibility is to believe an untruth. The few notable exceptions only emphasize the general fact, though they unduly affect international politics.

It is in the states otherwise most democratic in character that the executive department is independent of the legislative. Yet in all the world executives alone bear the primary responsibility for foreign relations. And the phenomenon is noticeable that the most democratic states have executives elected for a definite period. Except for treaty engagements, they can give any direction they please to foreign relations during their tenure. Only a few autocratically organized governments give the executive more control. Cabinet government, which prevails in Europe, makes the executive cabinet dependent for tenure upon a vote of legislative confidence, which can be proposed almost without restriction.

The conduct of foreign relations is, of course, an executive function. This is recognized as the fact throughout the world, regardless of governmental types. The constitutional systems of all but a very few states provide effective means either to dismiss cabinets from power when they lack legislative confidence or to refuse a further mandate to executive officers periodically elected. Either method renders the responsibility of the executive in charge of foreign relations very real. The legal legislative department of all governments possesses another potent, though indirect, means of influencing the conduct of foreign relations. This is the control of the purse. Again, with only a very few exceptions, the legislative organ of governments receives what amounts to a report on foreign affairs when the ministerial budget is voted. Cabinets or ministers have fallen frequently enough at that time to demonstrate that such control is not a negligible circumstance.

Moreover, the present sanction of national diplomacy, war, gets its going funds from the legislative department of the government. In many states the legislature participates in the declaration of war, and everywhere votes the funds for its conduct. Throughout Latin America the legislative department votes war, while the executive declares it. In the United

States, congress declares it, thus possessing an executive function. In Europe's constitutional monarchies the ruler usually has large liberty in respect to declaring war, the apparent reason being that the act has been left to his discretion as an historical prerogative, while the people have aimed at restricting its employment through assuming control over the funds.

Two facts become clear from these summaries: foreign relations annually come under legislative review in all but a few states either through democratic methods, which will be detailed later, or through voting of a ministerial budget; and, the ultimate misfortune of war depends everywhere upon legislative financial support.

This amount of legislative control over foreign relations is sufficient to make the legislative department measurably responsible. As one watches the coursing of foreign questions through parliaments, indifference on the part of legislators is the most salient phenomenon. In any legislature there is only a bare handful of parliamentarians who take an active or intelligent interest in affairs beyond the border. Legislators do not ordinarily live up to their responsibility where they have it thrust upon them by constitutional prescription, and almost inevitably they view the question that projects beyond the boundary from the insular point of view of internal politics. It is easy to retort that men whose concern in such matters is uncertain of effect have no incentive to become experts; but careful and competent observers have usually seen little to commend in legislative intervention where it is a normal possibility.

The fact seems to be that for the most part foreign relations are too delicate and based upon considerations too impalpable for large bodies of men to deal successfully or even intelligently with them. Foreign policy, which is so peculiarly a matter of philosophical striving toward an imaged goal, is at once the part of foreign relations subject to most multifarious interpretations and most important to protect from the error of mistaking intrigue for statesmanship. Thus foreign policy is on the one side unsuited by its nature for legislative origination and on the other open to the dangers of over-refinement and

casuistry when left entirely in the hands of ministers. Policy is so elusive that it may never be affected by treaty provisions. In the United States, in fact, where all treaties are subject to approval by the senate, before ratification, each administration pursues policies almost as ardently as European statesmen in their palmiest days, without any possible legislative control whatever unless policies casually appear in treaties or require the passage of laws. For decades the Monroe Doctrine was a purely executive policy; and several administrations extended the doctrine without legislative assistance. A recent administration encouraged financial investment abroad.

These instances might be multiplied for the United States or for other states regardless of their democratic institutions. Legislative intervention, then, in foreign relations has very slight effect on foreign policy. The predominating system of government by which the executive is either elective or dependent in tenure upon holding a legislative majority may be claimed to be satisfactory and scientific in permitting representative control of foreign relations in their various phases. Several important states exist, however, where neither system prevails.

SECRECY IN FOREIGN RELATIONS

Perhaps the majority of the criticism connected with the conduct of foreign relations aims at what is inaptly called secret diplomacy. The exact limits of the phrase seem nowhere to be defined, and the critics collectively make so many concessions in favor of secrecy that not much but an ill-natured indictment remains when the charges are completed. The bulk of the discussion has not recognized that any legally constituted authority in a state, by the very fact of such legal establishment, performs public functions responsibly, so that a certain burden of proof exists in its favor and against those who charge misuse of power. To picture conductors of foreign relations as mere intrigants, triflers with the fate of the state, gamblers with national destiny, is to misjudge profoundly the real incentives to action and to deny to a body of men more than ordinarily desirous of honor by their fellows the instinct for being well-regarded.

The truth is that the conductors of foreign relations exhibit an almost uncanny prescience in judging events and acting as the agents of the state. The instances in which they have been repudiated by the people they represent are few. Of course, I do not claim that such success in interpretation gives a moral bill of health. The normal attitude that a public man takes is that of satisfying the majority, even though the minority may be more right. The conductor of foreign affairs is trebly bound: he must anticipate what the bulk of his countrymen will expect in a given case; he must frequently obey the teachings of experience in the face of public opinion; and he must seek to satisfy both these demands when encountering a similar resultant of forces to which his antagonist pays heed. The accommodation of these conditions is in addition to any problems arising from the difficulties inherent in the question at issue, which are very likely to be large.

The outstanding fault in the whole conduct of foreign relations is that the diplomatic agent is an advocate. When Sir Thomas Wotton made the famous pun about an ambassador being a man sent "to lie abroad for the good of his country," he stated two facts then true. For then an envoy usually tried prevarication as the shortest road to a result, though lying has now gone out of fashion in foreign offices. The other fact remains true: an envoy is abroad for his country, and his principals at home are also "for the country." Both are expected to win victories. Though national politics may stop at the water's edge, the diplomat is nevertheless expected to come home with his shield or on it. It is only recently—within half a century—that there has been any general conception of a policy of fairness as something inuring to the good of the state in the long run; and that conception has neither been widely enough operative nor consistently enough followed to alter the dominant idea of the diplomat as an advocate.

As a consequence a certain amount of secrecy becomes of importance in negotiations, and more or less normal. A national public becomes a lever, useful for prying an opponent away from his stubborn resistance to the national desire. In

studying the negotiations following the Agadir incident a clear idea of the operation of this method may be acquired, because a full file of newspaper dispatches and communiqués is available for comparison with the official dispatches. The negotiations were conducted in secrecy, except for cause. The German foreign office frequently issued *ballons d'essai* the ideas of which, being supported by the press, were then pushed by the negotiator as something that the people demanded.[12] The French at Paris did the same thing.

There are excellent reasons for secrecy in the course of negotiations. Sir Edward Grey discussed the point in the British parliament in 1912. He said:

"There is a great deal in foreign affairs which cannot be disclosed. Secrecy there must be up to a certain point, because in foreign affairs we are dealing with the relations with other countries, with secrets which do not belong to us specially, but which we are sharing with some one or more foreign powers. . . . . Very often at an early stage of negotiations to make a premature disclosure would result in the other power desiring to break off the negotiations altogether."[13]

But this is not the only reason for secrecy in negotiations. A negotiator is charged with securing a result, invariably of a complicated character, as even a cursory reading of diplomatic correspondence or of the treaty texts resulting will show. The great bulk of subjects dealt with is of a purely technical nature and interests the public about as much as the technique of actuarial methods would interest the insured individuals. Two reasons, then, become apparent for secret negotiation—the disturbance to smoothness of progress in the task and lack of public concern.

The legitimacy of guarding the progress of negotiation from disturbance arises from the fact that the executive negotiator as an authorized agent is sailing an uncharted sea. The mere circumstance that a matter requires negotiation indicates that

[12] Ministère des affaires étrangères. *Documents diplomatiques*, 1912. *Affaires du Maroc*, VI, 1910–1912, pp. 421, 433, 441, 477.

[13] *Parliamentary Debates*, Fifth series, vol. xxiv, 540–541.

it involves conditions other than law, the definite processes of which never should be secret. In a famous state document Elihu Root referred to negotiators as "effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents."[14] To make generally public the vicissitudes of intermediate stages of a negotiation conditioned on such various and varying circumstances is sheer impossibility. The result could only be confusion, and the expert would be only less confused than the amateur. Very few take the trouble to examine the records when they have become historical and are logically arranged with the apparatus of reference. Any one who does take that trouble and is willing to keep in mind that both sides have rights to guard and national points of view to further is as likely to respect the ability shown as to criticize the details of the task. And if one will compare such a complete record with contemporary press accounts, he will clearly realize how much out of perspective the latter are; not from dishonesty but simply from the incompleteness of the record.

The public lacks interest in the details of negotiations, which are necessarily of a technical character. The extent to which activities afoot in the foreign offices are reported in the press indicates even now—and the circumstances will increase—that the public is kept aware of the trend of events. The public does not care for more. It would serve no good purpose if it did and the desire was satisfied. Negotiations are delicate affairs, involving some interpretation of policy and invariably affecting national predilections. One must presume from the nature of all governments that the executive negotiator possesses a mandate to act in behalf of the state and is sufficiently human to seek honor and success rather than dishonor and failure. The strongest presumption therefore exists that the negotiator conducts his technical business in good faith and not only seeks to meet the wishes of the political majority on which his tenure

[14] Instructions to delegates to Second Hague Conference, *Foreign Relations of the United States*, 1907, 1135.

of office depends, but also tries to advance his country. Not to credit him with patriotism implies something like treason.

Turning to another phase of the subject, different conditions exist respecting the historical publication of the documents of negotiation. By "historical" I mean to indicate publication after the fact. This may be done immediately after a negotiation is completed, at stated times, or long after the negotiations. Two methods are practiced.

The American method since 1861 has been based on the annual publication of a volume now entitled "*Papers Relating to the Foreign Relations of the United States*, with the annual message of the President transmitted to congress. . . . ." In this book is printed the bulk of the diplomatic correspondence of the year with which it deals, arranged by countries and under them by subjects. It is carefully edited and, though not all documents are published, the impression made by it is honest and straightforward. Omitted from the book are: domestic letters, by which term is understood correspondence originating within the state; large amounts of correspondence relating to claims; a considerable amount of correspondence of an incidental or unimportant relation to the subject handled; and all correspondence with any state which refers to a third state's actions or policy in anything approaching a critical manner. The published volumes average about one thousand octavo pages of five hundred words each.

In addition, the American method comprises many documents presented to congress in response to resolutions calling for papers by either the house of representatives or the senate, chiefly the latter. To the senate many papers are transmitted as executive documents, emanating from the President and relating to business which constitutionally concerns the senate. Other papers when called for are the subject of a resolution specifying what is desired, "if not incompatible with the public interest." House and senate documents are reported in the *Congressional Record* and are obtainable on request. Executive documents are obtainable only after the injunction of secrecy is removed. For about ten years a tendency has been evident to withhold diplo-

matic correspondence from the public. The interval in publishing the volume of *Foreign Relations* has been extended to five years after its date year, and is now longer than that. Congress is frequently refused correspondence called for, notably respecting Mexico. During the European war, the department of state has officially issued white books on phases of foreign relations connected with the conflict. These have a small and technical circulation, like all such publications. But the newspapers have been furnished with the text of some important or opinion-making documents, and these, being available to every one and generally read, have caused the convictions of the people to become definite. As such isolated documents do not give a fair impression of the whole subject with which they deal, they can scarcely be expected to invoke a public's instructed judgment.

A third feature of the American method is a recent tendency to obviate such secrecy as exists. Ordinarily the senate advises and consents to treaties in secret executive session; but in 1912 the Taft arbitration treaties and in 1916 the canal treaty with Nicaragua were debated in open session.[15] These treaties and others have recently been published while action was pending. During the European war it has been a general practice of the government to give to the press the texts of important diplomatic correspondence, while the department of state has issued officially white books with many additional documents.

These details of publication of documents exist in their essentials, *mutatis mutandis*, throughout Pan-America, where the

[15] The first instance of debating a treaty in open session was apparently that of the Bayard-Chamberlain fisheries treaty of February 15, 1888. That treaty practically ended the century-old North Atlantic fisheries controversy between Great Britain and the United States. Its discussion in open session of the senate had unfortunate results. It was made an issue in the presidential campaign of that year and failed of ratification. That it did not deserve to be killed by publicity, or killed at all, can be seen from the fact that some of its most important provisions were embodied twenty-two years later in the award of the Permanent Court of The Hague in the North Atlantic fisheries arbitration.

Executive sessions of the senate are not reported stenographically. A summary journal is kept and this is published in a small edition several years after the period with which its text deals. It usually shows amendments to treaties offered, votes thereon and the votes consenting to ratification in the customary "yea-and-nay" form.

annual publications are called *Memorias*[16] and are in the form of a report with justificatory documents attached.

The European method leaves much more of the files of the foreign office unprinted. The bulk of the diplomatic correspondence never sees the light, though privileges of examination by students are freely granted. The method is sufficiently indicated by the practice of Great Britain. Downing Street annually publishes folio white or blue books to the extent of some two volumes in the set of Parliamentary Papers. These papers make no attempt at presenting a conspectus of Foreign Office business, nor do similar publications in Europe. They do deal extensively with particular subjects, the dispatches being published verbatim and with great fulness. To give a comparison in methods, the Second Hague Conference may be cited. *Foreign Relations of the United States*, 1907, contains correspondence up to the issuance of the instructions to the delegates, which are followed immediately by their report. The considerable amount of correspondence inevitable while the conference was in session is lacking. The similar British publication contains the dispatches reporting the progress of events, day-to-day instructions and the alterations of policy due to the vicissitudes of negotiation. Comparison will usually show that British documentary publications are fuller than those of American countries. The same is true of France and most other European ministries. Germany is an exception, the Wilhelmstrasse not being given to publishing dispatches *in extenso;* rather, when documents are required, a statement giving a running account of the appropriate subject-matter is printed, and justificatory documents are annexed to this. Published diplomatic correspondence in Europe is laid before the legislative department, usually by request.

That a certain amount of editing is done goes without saying. Editing properly takes place respecting dispatches that involve personalities. A negotiation is afoot, and a diplomat writes to his chief that the minister with whom he deals is temperamentally a bargainer, and things will go smoother if the initial de-

[16] In Brazil they are called *Relatorios*.

mands are stiffened to give this predilection free play. Or the minister is a very reasonable being, and it will be best to draft demands as nearly as possible to meet his wishes. A letter of the first tenor would, if published, destroy a diplomat's possibility of usefulness abroad; a letter of the second tenor would destroy confidence at home. The one would create antagonism in the minister, the other a suspicion of disloyalty to the cause of his country. Yet both types of letter are necessary in negotiation. Unless such letters are exchanged, negotiators and their own ministers can not understand the conditions to be encountered. Editing of such comments out of published reports is advisable.

To a large extent the charge of official unfrankness in connection with such editing is avoided by the obvious method of discussing personalities and of reporting personal impressions either by word of mouth or in private letters. By general custom, it is understood that a minister of foreign affairs conducts correspondence of an unofficial character with diplomats abroad. This correspondence remains private, not usually finding its way to official files. Less formal in character than official correspondence, it is an appropriate vehicle for relating the gossip requisite for judging personalia. Two instances of such correspondence may be given as illustrations, though they are numerous and occur everywhere in the reminiscences of diplomatic officers.

It will be recalled that the Hay-Pauncefote treaty of February 5, 1900, passed the senate only with radical amendments, and that in the negotiations for another treaty during the next year the American department of state sought to secure terms which would be acceptable to that body. *Foreign Relations*, 1901, contains only the treaty text, but subsequent differences respecting Panama Canal tolls under this treaty of November 18, 1901, brought calls for correspondence. There were published as a result on April 23, 1914, many documents dealing with the negotiation. These included several "private personal letters, not of record."[17] They contain nothing which would have concealed anything improper in the slightest degree from the citi-

[17] *Diplomatic History of the Panama Canal*, Sen. Doc. No. 474, 63rd Congress, 2nd session, 21, 22, 36, 37, 51, 53.

zen and became useful in print solely because a question of interpretation had arisen which could not have been forecasted. Moreover, there was a good reason for omitting the correspondence from *Foreign Relations*, 1901. The treaty itself textually put the government on record concerning what it had done and the correspondence concerning it was therefore properly deemed of slight importance at the time. In the publication of that year's activities the material on the treaty negotiations came into competition with the important and significant negotiations connected with the relief of the Peking legations from the Boxers. As between the two the Chinese correspondence was much the more useful to publish at the time.

The other instance is from the life of Sir Arthur Paget, the English diplomat accredited to Vienna from 1801 to 1806. In a dispatch of October 24, 1805, he dealt "as it was his duty to do"[18] with the manner in which the Austrians had conducted the campaign culminating in the capitulation of Ulm. Some of his comments were:

"The first and principal fault which has been committed was to have taken the field with too small a force. . . . .

"I cannot explain this strange distribution and misapplication of the forces but in the two following ways:

"1. It is probable that General Mack, aware of the jealousy or perhaps the decided hatred borne him by the Archduke [Ferdinand], was unwilling to inflame that animosity by a proposal to withdraw from Italy any very considerable number of the troops . . . . . placed under the command of his royal highness. . . . . To this false and misplaced delicacy therefore are in great measure owing the present misfortunes. . . . . .

"2. In settling the plan of the campaign, it must have been calculated that previous to the opening of it the Russians would have joined. This in truth, however false and extraordinary, was the calculation which was made . . . . . .

"Either the Austrians were in sufficient force to contend alone against the French, or they were not.

[18] Sir Robert Adair, *Mission to the Court of Vienna*, 10, note.

"In the first hypothesis, why should the position of the Iller have been chosen, *never to be abandoned* (sic)? In the latter, why risk so forward a movement? . . . ."[19]

After Austerlitz the English parliament called for papers and Lord Mulgrave, Pitt's secretary for foreign affairs, allowed this dispatch to be published. On March 14, 1806, Charles James Fox, who had succeeded Lord Mulgrave, asked Sir Arthur's resignation in a private letter. He said in part:

"I should . . . . have waited till I found an opportunity more agreeable to you, if the papers . . . . printed had not appeared to me to be of a nature to render your continuance at Vienna disagreeable to yourself and by no means conducive to the public service. The publication . . . . seems to me to have been as little necessary to the defense of our predecessors as it is certainly unfair and unjust toward you; but having been so published no alternative was left to me. . . . ."[20]

The writer has used the modern diplomatic correspondence of most of the Pan-American states, which publish their dispatches yearly, and that of Great Britain, France, Portugal, Germany, Austria-Hungary, Italy, and Belgium which publish correspondence on specified subjects occasionally. He has found the European publications generally fuller and more satisfactory for the subject dealt with. The exception is Germany, which does not print correspondence but a documented argument. But Great Britain is the only European state which can be said to publish correspondence regularly, and on the whole the regular publication of correspondence would seem to be the desideratum that should be aimed at. Mountague Bernard sums up the situation justly in these words:

"The publication of despatches has its inconveniences: it closes many channels of information; it may often embarrass an envoy in his dealings with foreign ministers; it tends to encourage the bad practice of writing despatches, not for the persons to whom they are addressed, but for the public by which they

[19] *The Paget Papers* . . . . edited by Sir Augustus B. Paget, vol. ii, 224–225.

[20] *Ibid.*, vol. ii, 272.

will be read. Rigidly enforced, it would prohibit all confidential reports and close the door to all confidential intercourse. Yet, with all its inconveniences, broad daylight is, I am persuaded, the most effectual check on those faults to which in the field of foreign policy governments and their agents have been prone. Base motives and crooked designs shrink from it; falsehood and dissimulation spin their webs in dark corners; that political wisdom which so often overshoots its mark loves to scheme and calculate in the shade. But the great interests of nations thrive best in it. It animates public spirit, and invigorates the sense of duty."[21]

The third set of considerations respecting secrecy in foreign relations relates to secret treaties. No subject connected with foreign relations has recently received more attention. In my deliberate opinion most of the criticism is misplaced and most of the so-called advantages of secret treaties misunderstood. On this subject Bernard, usually so keen an analyst, makes only a very obvious remark:

"Secret treaties, and still more secret articles annexed to published treaties, are in the nature of lies; for a treaty is essentially a public engagement, and to publish a part as the whole, keeping the remainder undisclosed, is to palm off an imposition upon Europe. And yet the arguments for truth and openness in international affairs are plain and irresistible. Without them there can be no confidence, and on the confidence which a diplomatist inspires his whole success depends. Machiavelli saw this. In his letter of advice to Raffaello Girolami, Florentine envoy to the court of Charles V, he insists strongly, from his own observation and experience, on the importance of gaining a character for sincerity."[22]

[21] *Four Lectures on Subjects Connected with Diplomacy*, 160–161. Bernard, who was one of the British negotiators of the famous treaty of Washington of May 8, 1871, for settlement of the *Alabama* claims, was of course not contemplating such a frenzy of conducting negotiations in the newspapers as has characterized the diplomacy of the European war. It may be doubted whether the practice in the presence of belligerency will set a precedent, for it is inspired by a spirit of propaganda which can not be considered a normal characteristic of negotiation.

[22] *Four Lectures on Subjects Connected with Diplomacy*, 126–127.

Secret treaties or articles are out of fashion. The reason is not their dishonesty but their inefficiency. There are no secret treaties. The most that can be said of those whose text is unpublished is that their text is not generally known. In the nature of the thing there can be no secret treaty, for such a document is without reason for being unless directly or implicitly aimed at a third party; and that party has exactly the same interest in discovering the plot as the plotters have in making it. It is beyond the bounds of human possibility to keep a plot heinous enough not to bear the light of day from evidencing itself. But, once there is evidence of the existence of the plot, its terms, or at least its bounds, will become known to the interested third party from many sources. The intended victim finds his protagonists acting irrationally or under reserve in certain fields of their relations, and draws the obvious conclusion that they are so acting for cause. Knowing his relations with them as well as they know their relations with him, he is equipped to localize the plot, and it is then little more than a matter of detective work to discover the details. Little by little the evidence is built up and finally the whole thing can be reconstructed with the substantial accuracy with which the scientist reproduces the prehistoric animal from the fossil remains of a few bones.

At that stage the so-called secret treaty can scarcely be said to be secret. At best it is only semi-secret. To make the point clearer, it may be well to illustrate the process outlined. The Franco-Russian alliance of 1891–1894 was announced as a secret treaty, so that the preliminary and evidential ratiocination was unnecessary. But it was entirely obvious that it was directed against the Triple Alliance, and that in itself indicated both negatively and positively its restrictions. The chiefs of the allied states exchanged visits and the character of their *entourages* as well as the substance—expressed or omitted—of the communiqués concerning the visits afforded evidence. Questions were asked and answered in the Chambers, casual references made in diplomatic dispatches eventually published or in conversations, and the alliance was referred to by cabinet members. All such

material when pieced together affords a very precise knowledge of the contracts made.[23] The same process pursued in the case of the Triple Alliance, which, on the whole, is the best-kept secret of its type, resulted in a sufficient knowledge of its stipulations.[24] Secret articles were annexed to the declaration between Great Britain and France of April 8, 1904, respecting Egypt and Morocco. Much was made of them at the time of their publication in the *British Treaty Series*, No. 24, 1911. Yet they really were not secret at all except in terms. The first article stipulated what portion of the public declaration would remain intact if circumstances altered policy, being nothing more than a normal statement under the principle of *rebus sic stantibus*. The second article stated definitely what was obvious on the face of the published articles, the idea of a respective freedom of initiating reforms in Egypt and Morocco. The third article guaranteeing to Spain "a certain extent of Moorish territory . . . . whenever the Sultan ceases to exercise authority over it" was not news; it had been obvious all along from the adhesion of October 3, 1904, by Spain to the published articles and the agreements of May 16, 1907, respecting maintenance of Franco-Spanish-British territorial *status quo* in the Mediterranean. The fourth article provides for the case of Spain's declining to enter the arrangement and the fifth article for necessary action concerning repayment of the Egyptian debt.[25]

If secret treaties are not really secret, what, then, may be asked, is the cause of their being? It is my opinion that the aim of every secret treaty will be found in a single purpose, direction toward a third party whose interests or susceptibilities would not be improved by the knowledge of the engagement. As has been indicated, the knowledge does not remain concealed. But if the secret treaty is itself a dishonesty, its frequent cause is an

[23] In 1913 Pierre Albin, in *La Paix armée,—l'Allemagne et la France en Europe* (1885–1894), brought together the evidence. See that work, pages 315–377, for a detailed account of such evidence as is here cited.

[24] See particularly a dispatch to the London *Times* of December 9, 1912, and E. J. Dillon, *From the Triple to the Quadruple Alliance*.

[25] Really nothing needed to be added to the statements made to German diplomats since March 27, 1904. See *Documents diplomatiques. Affaires du Maroc*, No. 1, 1901–1904, pp. 122 and 166.

honest impulse, namely, that states arranging to perform some type of autopsy on a third are sufficiently regardful of honest practices to attempt to keep their intentions from becoming public. It is the Machiavellian advice that the prince should appear to have all the good qualities it is not necessary to possess.

If we lived in a perfect world the secret treaty would from this point of view be more discreditable than it apparently is. But, as things have been, some concessions have been made to things as they are. The conduct of public affairs is always a matter of trusteeship, but without the external limits that are internally placed on the acts of a trustee. A sovereign state is comparatively, and in a legal sense wholly, free to do as it pleases; and the temporary trustees of a second state have never been at liberty to sacrifice the interest of their own states by strict adherence to honesty in the face of an opponent's dishonesty. No people will permit that. It therefore has happened, and will happen until international good supervenes above national good, that international affairs have tended to take the complexion of the most reckless or dishonest participants. Betterment has resulted from precedents unregarded at their birth,[26] and usually permitted to be born because the old practices had mechanically got on a dead center.

It follows that one secret treaty breeds another. The cause may be sheer protection, the better balancing of powers against each other or the mere isolation of a problem to be solved without external interference. The Triple Alliance was born of Germany's surprise at the remarkable recovery of France after the Franco-Prussian war, and of a determination to establish a prestige gained by that Teutonic success. The Dual Alliance followed to redress the balance. The third type of secret treaty has found its later uses on the outskirts of the European world. Its subject-matter has been the phrasing of policy toward territories in which European control was yet incomplete and native control imperfect.

[26] Such was the famous arbitral declaration inserted in the twenty-third protocol of the Congress of Paris of 1856.

The generation of one secret treaty by another is perhaps the most vicious feature of the practice. Its epidemiology—as the doctors would say of physical diseases—deserves examination. As has been pointed out secret treaties fail of their secret purpose, being decipherable and actually deciphered by normal methods of ratiocinative detection. But so long as the text remains secret a region of uncertainty exists. Opponents may know all about the aim of the treaty and be sure of its details, but they can never know that they know.[27] When, therefore, a secret treaty generates a secret reply, as is its nature, the retort is more likely to be based on what the first treaty might contain of threat than what it really does contain. Not knowing what the original provides, the response more than balances it; the original negotiators add a codicil; and international relations thus become progressively worse.

A suggestion has been made that the solution of the secret-treaty problem is to be found through establishing in public law the principle that secret engagements are void. This suggestion, to be effective, must be accepted by those states which in the past have or might have negotiated such treaties. If they should be convinced that they would have no further use for such treaties, they might still be disinclined to criticize their own past action by making such a change, especially since their intentions gave the same practical result. Those states which have not indulged in secret treaties would not register an advance by assenting to such a rule, and might feel that advocacy of it would be a reflection on other states. Establishment of the principle, should circumstances fortunately render these considerations of little weight, would certainly be beneficial as a positive solution of the problem.

This is not impossible because of a philosophical tenet of international law that might be made generally operative. I refer to the custom of proclamation, or promulgation, of a treaty, which is admitted to have the effect of rendering it binding upon the nationals of the state. Conversely, as Bonfils says, "Il y a exception pour les traités secrets. L'état est lié, mais les

[27] I omit from consideration the actual acquiring of texts by means of espionage, a practice more normal in novels than in foreign offices.

sujets ne sont pas obligés, puisque le traité leur est inconnu."[28] There is much to be said for the idea that the state as an entity can and should have relations which its nationals cannot have, but little can be said for the idea that the state as a trustee can and should have relations which its nationals should not know about. A nation which may not know what is best to be done in its own behalf by agents is nevertheless entitled, if it desires, to know what its agents have done for it. There can be no doubt of the fact that the state is the creation of its inhabitants; the conception of citizens being created for the state is exploded. The relation of all this to the proclamation of treaties is direct. Pan-America proclaims treaties on the supposition that the people are the principal and the state their agent. Europe has another philosophical attitude based in part on the theory that the state and the people are separate. In Europe treaties that enjoin specified conduct by citizens are proclaimed, but those which determine the attitude of the state itself are not necessarily proclaimed. At any time when the states decide to examine in conference the mechanism of treaty-making, these considerations concerning proclamation will receive attention, and the decision will tend toward the greater employment of proclamation as a substantive step in rendering treaties enforceable. Beyond that, dependence for a change must be upon a change of attitude among the peoples whose governments can successfully negotiate secret treaties.

In several states secret treaties are permitted by the constitution, and this renders a clear cut and definite reform almost hopeless. No such state could agree to secret treaties being void in principle, for that would infringe the constitution. Likewise, such a state would have to make serious reserves respecting proclamation. Thus, definite reform along those lines would depend wholly upon public opinion in each state. A reform which depends for realization on the way for it being cleared by changes in the constitutions of the states which may be considered as the culprits cannot be held to offer great promise of success.

[28] *Manuel de droit international public*, par. 831.

Such progress as might be made that way could very profitably follow the conditions provided in Norway, where the constitution provides: "The Storthing is entitled to be informed . . . . with regard to secret articles, which must, however, not be at variance with the public ones . . . . . Minutes regarding such diplomatic matters . . . . . as it has been decided to keep secret shall, however, be laid before a committee chosen from among the members of the Odelsthing, and consisting of not more than nine members; such matters may also be brought before the Odelsthing for discussion, if a member of the committee should make a proposal to this effect or to the effect that an action should be brought in the High Court of the kingdom [*Rigsret*]."

It seems unlikely that secret treaties can be discontinued until every state is ready to forego their apparent advantages. Certainly if two states make such an engagement a response is inevitable from those which are affected by it directly or indirectly. Realizing the process set up, there is a possible way of making such a response without secrecy. An open treaty whose operation and terms were stated to be conditioned on the terms of the secret treaty would throw the burden of proof on the parties to the secret agreement, who would doubtless try to shift responsibility. The appearance of honest intention is the least virtue a state can assume, and it is always true that a national policy, however vicious, is nationally considered as moral and justifiable in view of conditions. The way to nullify this psychology is to deprive it of basis. A secret treaty replying to a secret treaty does the opposite, confirms the national conviction of self-righteousness. But an open treaty, dependent on the secret one fori ts scope and conditions, would indicate plainly even to the citizens of the secret-treaty states that the concealed provisions were the cause of the retrograding situation. No state will stand against so obvious a situation.[29] The problem of the secret treaty

[29] An illustration of the operation of this psychology is to be found in the negotiations of Austria-Hungary and Italy concerning the Triple Alliance. These brought out the text of Articles I, III, IV and VII of the treaty in negotiations apparently without moral foundations, but in which each side sedulously sought to appear right.

is the proper maintenace of the interests of the intended victim without action that will confirm the situation brought about by the secret treaty. An open-treaty reply will accomplish that.

To conclude, secrecy in matters relating to foreign relations may consist of: secrecy regarding negotiations, secrecy respecting documents after negotiation, and secrecy respecting treaties, which are a frequent result of negotiation. The chief evil in each case has probably been due mostly to the attitude of advocating a cause forced by public opinion upon the national negotiator. No full reform will be registered until national publics are more anxious for right to prevail than for their state to score a success. In practice at present foreign secretaries are in a situation similar to that of a revolutionary dictator: they have support so long as they win or do not too obviously fail. Secrecy has contributed to scoring temporary successes, and has been accordingly overlooked or forgiven.

Secrecy regarding negotiations in progress should be maintained. Press statements regarding them should be confined to honest summaries. If diplomatic notes are published, all relating to the negotiation should be furnished to the press.

Secrecy should not be maintained respecting the documents of negotiations which are completed. The historical publication of papers should be annual or oftener. There is much to be said for the Latin American custom of issuing a monthly ministerial bulletin containing the text of correspondence, but no system less well-arranged than *Foreign Relations* of the United States can be wholly commended. Discretion respecting publication of documents and in editing should depend upon the good of the state and international courtesy.

Secret treaties are morally bad, offering only very temporary advantages, and entailing permanent disadvantages through their reaction on international relations. Their *raison d'être* is to conceal designs against third parties, who would resent them if known, and they almost inevitably come to be known with substantial completeness. The cure of the secret treaty is to answer it with an open one whose operation is conditioned on the terms of the secret engagement.

THE DEPARTMENT OF THE NAVY[1]

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In the United States, the department of the navy is the constituted organ of the government for administering the navy. Its sole reason for existence is the possibility of war. The most important office in the navy department, after that of the secretary of the navy, is the office of naval operations. All the other offices in the navy are merely accessory to that one particular office the function of which is the preparation of the navy for war.

The method of naval administration now in force in the United States is the outcome of a gradual development. When the Constitution went into effect in 1789, it contained several references to the navy. Congress was given power to "provide and maintain a navy." The President was made the "commander-in-chief of the navy" and there was a clause which forbade the States from owning ships of war in time of peace. When, during Washington's administration, the executive departments were organized, there was no navy, and there was no pressing need for one. Congress, therefore, vested the control of the navy in the secretary of war. The frigate *Constitution* and her sister ships were thus built under the direction of the war department. But the imminent hostilities with France in 1798 revealed the need of a separate executive department for the proper administration of our sea force, and, on April 30, 1798, the bill creating the navy department became a law.

The rich experience gained in the war of 1812 exposed the fatuity of having the navy administered by a civilian, unaided by responsible professional advisers, or even the means of carry-

[1] A paper read at the meeting of the American Political Science Association at Cincinnati, Ohio, December 29, 1916.

ing on the duties of his office. The act of February 7, 1815, was therefore passed, which created the board of navy commissioners, consisting of three post captains, the highest rank of that day. This board was attached to the secretary's office to discharge under his superintendence all the ministerial duties of the office. This new legislation was a step in the right direction. It was modeled upon the excellent naval administrations created for the British navy in 1688. Unfortunately, our legislators took only part of the system to which they had turned for enlightenment. They provided an executive and military branch "for the employment of vessels of war," but they left out the civil and industrial branch which has to do with the construction, armament, and equipment of the war vessels, and the "procurement of naval stores and materials." Herein lay the weakness of the act of 1815. Its purpose besides was misunderstood from the first, and by no less a person than the secretary of the navy, whose hands it was intended to strengthen. The latter insisted that the duties of the commissioners were of a civil character, and this false conception of the object of the navy board gave rise to much friction, until in the end it lead to the repeal of the law.

A remedy for the defects was sought in the act of August 31, 1842, which, in place of the navy board, substituted five naval administrative bureaus, whose names were: bureau of yards and docks; bureau of construction, equipment and repair; bureau of provisions and clothing; bureau of ordnance and hydrography; bureau of medicine and surgery. Subsequently three additional bureaus of navigation, steam engineering and equipment were established.

The missing left arm of the naval organization was thus supplied; but, in the same stroke of the pen, the all important right arm was severed, and the navy was left without a responsible direction of its military force. In addition there was that pernicious clause which provided that the "orders of a chief of bureau shall be considered as emanating from the secretary of the navy, and shall have full force and effect as such." The act thus unintentionally created, in practice, no less than half

a dozen secretaries of the navy, each one, in his own bureau, clothed with executive authority equal to that of the constitutional commander-in-chief. This was a flagrant violation of a fundamental military principle, and it is this that caused such dire confusion, extravagance, duplication of work and irresponsibility, which, according to several secretaries of the navy, have characterized the business methods of the navy department for the last sixty years. Moreover, each chief of bureau was so engaged with the affairs of his own bureau that the general management of the navy and its employment was left to a civilian totally unfamiliar with naval affairs.

During the first few months of the civil war the defects of the administrative system of the navy department attracted widespread attention. The weakness of the secretary's office as a directing and unifying force was remedied in part by the creation of the office of assistant secretary of the navy. This was a step in the right direction toward correlating the work of the several bureaus. But even then further agencies were necessary to assist the secretary in his administration of what Lincoln called "Uncle Sam's web-feet." These Secretary Welles sought in the "commission of conference," created to discuss and determine the necessary naval plans and operation, and in a second confidential board comprising the bureau chiefs for the purpose of "considering and acting upon such subjects connected with the naval service as may be submitted to them by the department." In 1863 a "permanent commission" was appointed to report on all questions relating to science upon which professional advice was needed. During the war various other temporary boards, such as the "ironclad board," the "harbor commission," and the "board on plans and designs for the new vessels," were also created as circumstances demanded.

"The very great success of the navy in the War of Secession," commented Admiral Mahan in one of his graphic studies of our naval administration, "is universally admitted and needs no insistence; but, though frequently narrated historically, it is doubtful whether it is yet philosophically appreciated, or even understood. For present purposes it is sufficient to note

the fact that there was then found within the navy department—nothing existing there before, but introduced fortuitously for the occasion—a means by which the enthusiastic determination of the nation could take shape in intelligent comprehension of the issues and in strongly coördinate effort; while to the satisfactory maintenance of the activity thus directed the bureau system was found adequate."

The war showed the merits of the bureau system under favorable forcing conditions. But peace speedily demonstrated its defects. The moment hostilities came to a close, the principal task of the navy department became the reduction of the huge establishment which had been developed during the war. The commission of conference and the other boards were discontinued. Captain Gustavus V. Fox, who, as assistant secretary of the navy, had supplied the place of the "one navy commissioner," which had been urgently recommended when the navy department was reorganized in 1842, resigned, and with him disappeared what had been virtually an institution, rather than an individual or an office. Later on, the law authorizing an assistant secretary of the navy was repealed. "The lesson of the civil war was thrown away," remarked one naval authority, "and the department relapsed into a state looking to the early advent of the millenium, when wars on earth shall cease."

From this dream of uninterrupted peace the country was awakened in 1873, when the imminence of war with Spain, incident upon the seizure of the *Virginius*, spurred the department to the consideration of military questions. That part of the "business" had been unfortunately neglected in our naval administration since 1866. But nothing resulted from the war scare and another lesson was lost upon us.

It cannot be said that there was any concealment of this inability of the navy department of itself to deal with questions of war. In 1877 an attempt was made by Secretary Thompson to unify the separate parts of the navy department by forming a board consisting of the chiefs of the several bureaus, but the new organization effected little, for the centrifugal forces of the department were too much for it. This was only one

of the several attempts made during the period 1866–1881 to create some permanent board which should occupy a position in the administrative hierarchy between the chiefs of bureaus and the secretary of the navy, and thus bring to an end a condition that was becoming intolerable. Secretary William C. Whitney, in his annual report of 1885, frankly admitted the "universal dissatisfaction" with the inner workings of the navy department: "It is expressed to me quite universally by the naval officers, coupled with the hope and expectation that some remedy may be found and speedily applied. The country has expended since July 1, 1868, over seventy-five millions of money on the construction, repair, equipment, and ordnance of vessels, which sum, with a very slight exception, has been substantially thrown away." "It is questionable," he went on to add, "whether we have a single naval vessel finished and afloat at the present time that could be trusted to encounter the ships of any important power. This is no secret; the fact has been repeatedly commented upon in congress, confessed by our highest naval authorities, and deprecated by all. It is idle to suppose that abuses of the character I have glanced at can be prevented merely by a change in the personnel of the department. It is the system which is vicious." And he cites the case of the *Omaha*, upon which four separate bureaus had been working, independently and not always in harmony, in producing their respective parts of the completed ship, with the result that when she was ready for sea, they had so completely appropriated her space that they had left barely coal room for four days' steaming.

Such a pitiless disclosure of "mismanagement, of wasteful expenditure, of injudicious and ill-advised disposition of public moneys," should have lead to immediate and salutary reforms. Secretary Whitney admitted that the evils could not be corrected under the organization of the department then existing. Yet nothing came of it; and four years later we read Secretary Tracy voicing a similar complaint that the entire organization of the department was "without system or coherence."

When the war with Spain broke out, the navy department, for the fourth time, found itself with no organization for the

strategic control of its fleets, the bureaus being fully engrossed with their own administrative work. Accordingly, the so-called naval strategy board was extemporized to study the strategic situation and to offer sound military advice upon current affairs to the secretary of the navy and to the President as constitutional commander-in-chief. Fortunately, the strategy board had at its command a plan for action which the naval war college had thoroughly digested a few years before. This, the only one to which careful thought had been given, was perforce the one which Admiral Sampson's fleet and General Shafter's army followed.

After the war, the strategy board, being merely a temporary organization, lapsed, and the navy department once more refused to admit that it had duties other than administrative. But this condition could not continue long. In 1900 Captain Henry C. Taylor's views on the "concrete" needs of the navy department resulted in the formation of a general board for the purpose of dealing with the military duties of the department. "The American navy," he wrote, "has for some years felt instinctively that this, or something like this, was needed for future efficiency. Evidence of this is apparent in the creation, many years ago, of a war college at Newport and an office of intelligence in the navy department. In those two institutions are to be found many of the elements of a general staff, requiring only a slight drawing together by a common head to create a nucleus of effort around which would form a body of great usefulness to the navy and to the country." The members of the general board were the admiral of the navy, the chief of the bureau of navigation, the chief intelligence officer, and the president of the naval war college. Its duties were to ascertain the demands which our national policies were likely to make on the navy, and to advise the secretaries of the measures and the plans necessary to accomplish the navy's mission. This involved the preparation of the necessary plans for war, and the coördinating for this end of the work of the naval war college, which did the strategic and tactical thinking for the navy, and the office of naval intelligence, which gathered the data for studies of the mobilization plans of other nations.

The jealousies and fears of the administrative bureaus for a time seriously threatened the existence of the general board. But the prestige which the newly formed body owed to its president, the admiral of the navy, enabled it to hold its own and to improve its early position as the military branch of the navy department. Its rôle, however, was merely that of an advisory body to the secretary of the navy, to whom it addressed all its communications. In addition, it is well to bear in mind that the general board was established only by a general order (No. 544, dated March 13, 1900) issued by the navy department, and that it never received legislative recognition by congress until 1916.

On the whole the organization of the navy department remained based upon its former plan. The several bureaus continued to exercise the same duties as heretofore, with one exception. This concerned the bureau of navigation, whose principal functions were the administration and direction of the personnel, which was also an administrative bureau of the department. Congress having failed to provide a department with "command duties," there grew up the custom of entrusting the military duties of the navy department to this bureau, "in addition to its other duties." By law, the bureau of navigation had no precedence over the other bureaus, yet it acquired a priority in rank by reason of its directive duties. But the material bureaus that supply the requirements of the military branch did not always feel obliged to conform to the standards set by the bureau of navigation, and the bureau, on the other hand, was so deeply involved in its own routine of personnel administration that it sometimes could not fully appreciate its "additional duties" of preparing the navy for war.

In his annual report for 1900, Secretary John D. Long offered a plan for the simplification of the department's organization. This referred to the consolidation of the material bureaus of construction and repair, steam engineering and equipment. "The union of these three bureaus, the chief function of which is to deal with the material of the ship, into one bureau, the consolidation of their several corps of assistants and inspectors,

and the conduct of the really integral work of building and equipping vessels under the management of one responsible chief instead of three chiefs, would promote the efficient and economical administration of this important part of the business of the navy department." Nothing could be done without the coöperation of congress, however, and as that body took no action upon this recommendation, the opportunity of securing harmony by consolidation was passed over.

In the meantime Admiral Taylor, as chief of the bureau of navigation, was continuing his efforts to secure "an efficient administration of the fleet." In his annual report for 1902, he dwelt at length upon this all-important subject. The efforts made by the navy since 1893 to bring about a "larger control and a closer responsibility," had been attended with partial success. The bureau of navigation, the general board, the office of naval intelligence, the war college, and the board of inspection and survey had been drawn steadily closer together as component parts of a general staff. All this had been accomplished without legislative assistance; but "we can go no further," he remarked, "without congressional legislation, which shall establish a general staff with the control necessary to administer more effectively the affairs of the fleet. A complete plan is prepared, which will require only legislative recognition of the existence of a chief of a general staff and the several sections necessary to carry out the various details. Without such an organization, the power to establish thorough reforms will be lacking."

This and subsequent recommendations failed to bring about the desired action by congress. In 1909 the President appointed a board to consider the principles which should form the foundation for the reorganization of the department. The members of this board were ex-Secretaries William H. Moody and Paul Morton, rear admirals Stephen B. Luce and Alfred T. Mahan, and Congressman A. G. Dayton. Their report was so plain and so eloquent an appeal for reform that the very soundness of its recommendations should have convinced the stubborn legislators at the Capitol. But this, unfortunately, was not the case.

Congress refused to heed even the best professional advice, and did nothing.

One of the first acts of Secretary Meyer, after he came to the navy department in 1909, was to appoint the Swift board to consider the means of properly coördinating the work of the interdependent bureaus. "Advice on all subjects may be had for the asking, or even without asking," wrote Mr. Meyer in his annual report for 1909, "but as a rule, it would not be advice that it would be wise to follow. Its authors are not responsible." The secretary of the navy was, as should be under our form of government, a civilian, but, being a civilian, he lacked expert knowledge adequately to direct all the varied operations of the navy. It was essential, then, that he should be provided with assistants in the different lines of duties. As any administrative legislation by congress seemed improbable, the Swift board recommended measures which could be put into effect by the secretary alone. The business administration of the navy department logically divided itself into groups under personnel, material, and the operations or management of the fleet. Personnel included the bureaus of navigation, medicine and surgery, and the marine corps. Material covered the bureaus of construction and repair, ordnance, equipment, steam engineering, and supplies and accounts. Public works were the province of the bureau of yards and docks. To each of these divisions was detailed an officer of rank on the active list whose duty it was to advise the secretary on the matters pertaining to his particular division, but who actually had no "supervisory or executive power or authority." Paragraph 109 of the *Navy Regulations* for 1913 read, "To assist the secretary of the navy in coördinating and carrying on the work of the four divisions, there shall be on duty in the office of the secretary four officers of the navy on the active list, not below the grade of captain, to be known, respectively, as the aid for operations, aid for personnel, aid for material, and aid for inspections. The four aids shall constitute the secretary's advisory council, which shall meet daily to consider important questions arising in any division affecting the general policies of the department with a

view to an effective coördination of the work of the four divisions." The aid for operations was to advise the secretary as to strategic and tactical matters in conjunction with the general board, and also advise regarding the movements and dispositions of naval vessels; the aid for personnel was to advise the secretary on matters which fell under the bureau of navigation, the bureau of medicine and surgery, the office of the judge-advocate-general, and the naval examining and retiring boards; the aid for material was to advise the secretary generally on matters concerning the construction, arming, equipment, and supply of naval vessels, and the management of the navy yards; the aid for inspections was to advise on all inspections ashore and afloat coming under the board of inspection and survey for ships, the board of inspection for shore stations, and the special inspecting officers. "It must be distinctly understood," wrote Mr. Meyer, "that the purposes contemplated for the aids cannot be effected without an entirely broad view, each of his own field of activity, and without any participation in the details of the bureaus. The aids will not be allowed to burden themselves with the details, and will thus be free to discuss policies and reforms with the secretary." This was as it should be, and in accordance with the suggestions made by Admiral Mahan in 1903, when he emphasized the "two points: (1) that the advisers, one or a board, should be wholly clear of administrative activity; and (2) that he or they be advisers only, pure and simple, with no power to affect the individual responsibility of the decision. This must be preserved, under whatever method, as the secretary's privilege as well as his obligation."

In practice, Secretary Meyer's plan of naval reorganization was an improvement over the conditions existing when he came to the department. It placed the military branch in partial direction of the military direction of the navy, and brought about an improvement of the departmental routine, due to the advice of the aids, which was "exceedingly gratifying." The one imperfection of the plan was that it had not the force of law. Under any new secretary that organization might lapse back to the basis of the statute where the civil branch was given full

power to work without consulting the military branch, which, after all, was alone ultimately responsible for the successful prosecution of naval campaigns.

This was what actually happened when Secretary Daniels succeeded Mr. Meyer in the navy department. One aid after another disappeared from the secretary's council. The only addition was an aid for education, created to further the secretary's ambition to familiarize each gun-pointer and coal-passer with the mysteries of the English language and the problems of elementary mathematics.

Then came the outbreak of the European war, with naval operations on a scale unheard of in the world's history. Before the superb organization of the British navy, which at the outset checked the activities of the high sea fleet of Germany, the American people stood aghast. If there is one thing the Americans have prided themselves upon it is their common sense, their practical appreciation of the adaptation of means to ends. To the administration of their navy, one would have thought that they would apply some of the principles of efficiency which they had used in their mastery of the ancient frontier and of the wilderness and the western deserts. Yet, to the surprise of thoughtful citizens, their sea power, the all important factor of their national defence, they permitted to develop along the most "haphazard lines." The lessons of the immediate present were too serious to be entirely neglected. In fact so serious was the warning to us that naval officers felt emboldened to speak their minds more freely than was their wont, and the naval committees of congress in their hearing learned truths which, under ordinary circumstances, they would have preferred to silence. The people at last became aroused. Patriotic societies everywhere lent their aid to organizing public opinion which, for once, was beginning to urge what it should have demanded of its representatives in congress years before. This time congress was willing to listen. By the first week in January, 1915, the subcommittee of the house committee on naval affairs reached a decision to recommend constructive legislation of far-reaching importance to the United States navy. This was the establish-

ment of an office of naval operations whose sole duty was to be the preparation of the fleet for war.

As finally approved, the act of March 3, 1915 left much to be desired. It was, however, a step in the right direction, and the newly appointed chief of naval operations proceeded at once to place the navy on a practical war basis. Without additional legislation, the office took steps towards organizing the industrial resources of the country behind the navy. In less than ten months definite plans for the mobilization of the entire naval force of the United States were approved and placed into operation so as to bring into active coöperation all the various bureaus and elements of the navy department, together with the part each naval station was to play in case of war. All the vessels of the merchant marine were inspected and their particular duties in case of war assigned. An immense amount of detail was worked out and was placed on file ready for immediate reference. A definite division of mining and mine sweeping was put into operation, the naval districts and the part they were to play were definitely organized, the radio service was completely systematized. All these duties essential to the proper preparation of the fleet for war were attended to by the new office, which the administrative bureaus heretofore had been unable and incapable of transacting.

Whatever shortcomings there were in the law were rectified in the naval appropriation bill approved on August 29, 1916. The chief of naval operations was promoted to the rank of admiral; to assist him in his duties were no less than fifteen officers of and above the rank of lieutenant-commander of the navy or major of the marine corps. He was "charged with the operations of the fleet, and with the preparation and readiness of plans for its use in war," and during the temporary absence of the secretary and assistant secretary of the navy he was to be next in succession to act as secretary of the navy. The chief of operations now became by law, as well as in name, the responsible and coördinating factor in the affairs of the department.

After this somewhat detailed résumé of the development and historical antecedents of the navy department, we are prepared to deal with the present.

The naval administration has at its head the secretary of the navy, a civilian, who is the personal representative of the President. His is the sole control and the single responsibility. He has subordinates, but no associates. The duty of decision is, therefore, his alone.

The details of the administrative machinery of the navy are as we have seen of two principal kinds: those that concern the operations of the fleets, in peace and in war, which is the military side of the naval administration; and those that relate to the creation and perservation of the material in its several varieties—ships, guns, engines, etc.—which is the civil side. The aggregation of duties under these two heads being too great for any one man to discharge, they have been again subdivided by law. For this purpose there exist side by side the two phases of the system, the military and the civil, the secretary being at the head of each, as the agent of the President.

To assist the secretary in the field of civil administration, there is an assistant secretary of the navy (act of July 11, 1890), who, in the temporary absence of the secretary, is next in succession to act as such.

The direction of activities in themselves essentially military—originally delegated to the board of navy commissioners, but vested from 1842 to 1915 in the secretary of the navy—is entrusted to the chief of naval operations who has the rank of admiral, and, under the direction of the secretary of the navy, is "charged with the operations of the fleet and with the preparation and readiness of plans for its use in war." In the temporary absence of the secretary and assistant secretary of the navy, he is the next in succession to act as secretary of the navy, but the orders issued by him have at all times full force and effect as emanating from the secretary.

In practice, the scope of the duties embraced by the office of the chief of naval operations includes the direction of all strategic and tactical matters, organization, maneuvers, target practice, drills and exercises and the training of the fleet for war. This includes also the naval war college at Newport, the office of naval intelligence, the office of target practice and engineering

competitions, the operation of the radio service and other systems of communication, the operations of the aeronautics service, the division of mines and mining, the naval defence districts, the naval militia, and the coast guard when operating with the navy.

Next after the chief of operations come the seven bureaus[2] of the navy department, whose duties are limited in application to activities subordinate to military operations, and therefore essentially civil in character. They are, by title, as follows: Yards and docks, navigation, ordnance, construction and repair, steam engineering, supplies and accounts, and medicine and surgery. The several navy yards, and the designing, building and maintenance of their dry docks, wharfs and building, are in charge of the bureau of yards and docks, the chief of which is a civil engineer. The bureau of navigation has, "by a historical devolution," as Admiral Mahan pertinently remarked, "of which its name gives no suggestion, inherited the charge of the personnel of the navy, as well officers as enlisted men." It regulates their admission, supervises their training, preserves records of their service, and distributes them among the vessels of the fleet. In addition it is charged with the upkeep and operation of the Naval Academy and of the naval war college. Ordnance is a word which speaks for itself; this includes the manufacture of guns, torpedoes, mines and ammunition, as well as the maintenance of the naval gun factory, the naval proving ground and powder factory and of the various powder depots and magazines in the seaboard states. The bureau of construction and repair, whose personnel consists of naval architects, is charged with all that relates to the building and maintenance in repair of the hull part of the ships of the navy. Steam engineering includes the designing, building, maintenance and repair of machinery for all our vessels. The bureau of supplies and accounts is the purchasing agency of the service. It buys for other bureaus, subject to their requisition and inspection, and buys and supplies, on its own account, the provisions, clothing and supplies required for the

[2] The bureau of equipment was abolished by the act of June 30, 1914, and its duties distributed among the other bureaus.

ships in commission. It keeps, also, the pay accounts of the officers and men, and pays them at stated times. The hygiene of the navy is in charge of the bureau of medicine and surgery, the importance of which may be gauged by considering how far a well man is more useful than an invalid.

In addition to the bureaus, the organization of the navy department includes the judge advocate general of the navy, whose office considers and reports upon all legal questions relating to the personnel, and the solicitor, who attends to the other questions of law, such as the drafting and interpretation of statutes, and the drawing up of contracts.

The general nature of the functions of each bureau is apparent. To particularize further would be to become involved in a mass of technical details. The important fact to note is that each bureau has a distinct and mutually independent duty.

There is little question that the department administration would be greatly benefited by the creation of an office of inspections, which, constituted independently of the bureaus, would supervise the work done by the bureaus and make reports on the same directly to the secretary. In this way there would be provided a check upon the work of the several branches of the civil administration such as exists in every modern business for the purpose of obtaining greater efficiency in methods.

Before the establishment of the office of naval operations, the coördination and reconciliation of the divergent opinions inevitable between so many parties depended solely upon the secretary's appreciation of the necessities of the navy—not only from the point of view of the bureaus, but also from that of the fleet. It is true that, in matters of policy, the secretary, since 1900, has had the deliberations and reports of the general board to guide him, but that body being purely advisory, its recommendations have on many occasions been disregarded by him.

According to the navy regulations the various chiefs of bureaus, and the assistant secretary of the navy, the chief of naval operations, the major general commandant of the marine corps and the judge advocate general of the navy, form the secretary of the navy's advisory council. Meetings are held every week

at which the discussion relates to the various important matters of detail. Provision is also made for conferences between the chief of naval operations and the various bureaus when necessary to facilitate the transaction of business.

As at present developed there is every reason to believe that the organization of the navy department has reached the point where it may attain and preserve substantial unity of executive action, while at the same time it provides for the distribution among several individuals of a mass of detailed duties beyond the power of one man to discharge.

Admiral Mahan defined the test of a system of naval administration as "its capacity—inherent, not spasmodic—to keep the establishment of the navy abreast of the best professional opinion concerning contemporary necessities, both in quality and quantity. It needs not only to know and to have what is best today, but to embody an organic provision for watching and forecasting to a reasonable future what will be demanded. This may not be trusted to voluntary action or to individual initiative. There is needed a constituted organ to receive, digest, and then officially to state, in virtue of its recognized office, what the highest instructed professional opinion of the sea officers holds concerning the needs of the navy at the moment and for the future as far as present progress indicates." For forty years, the misconception and jealousy of our politicians prevented the navy from gaining the organization which it knew it must have if the fleet was to be effective in war. In the upbuilding of the new navy, the public mind also was centered too much on the power of the single ship; it took no account of the various accessories essential to the maintenance of the fleet. The greatest war of all time, however, has taught us that the administration of a navy consists not merely in building ships, in buying material, in repairing vessels, in enlisting men, in manning ships, or in developing navy yards and naval stations; it is the coördination of all these duties and their welding into an effective instrument of war. The responsibility for the efficiency of that instrument of war cannot therefore be divided. Each separate activity must be thoroughly controlled and made to coöperate toward the ultimate object of developing

the battle of efficiency of the fleet. The acts of March 3, 1915, and August 29, 1916, which established the office of naval operations, have paved the way for such a coördination in the department through the creation of a constituted military organ, senior to the existing administrative civil bureaus, and responsible for the preparation of the navy for war. The military branch of the department has been brought to the fore. But the prerogatives of the chiefs of the several civil bureaus granted by the act of August 31, 1842, unfortunately still prevail. While the office of naval operations has been installed in its proper place in the department, the bureaus have not yet received proper attention from our legislators. In time a more effective coördination may be brought about between these conflicting elements, but it will entail much effort and the waiving by the bureaus of some of their cherished but injudicious executive powers.

The spirit of our government requires that a civilian shall be at the head of the navy department. That is as it should be. But in this very lack of permanent tenure by the secretary himself lies one of the weaknesses of our system. As Mr. Meyer wrote in 1909, "in the past seven years there have been six secretaries of the navy." How can a civilian, lacking expert knowledge, under those circumstances direct all the varied operations of the naval service? With unlimited time a secretary could acquire that personal knowledge of details and acquaintance with the characteristics of his subordinates which are essential to the successful administrator. No such incumbency is to be expected under our system of government. To supply the defect inherent in temporary tenure and periodical change, there has been created in our naval administration the office of naval operations which may obtain for the navy a "tradition of policy,"—"analogous in fact" to quote Admiral Mahan's words, "to the principles of a political party, which are continuous in tradition, though progressive in modification. These run side by side with the policy of particular administrations; not affecting their constituted powers, but guiding general lines of action by influence, the benefit of which, through the assurance of continuity, is universally admitted."

OBSTACLES TO MUNICIPAL PROGRESS[1]

HENRY T. HUNT

The strange divergence between what city dwellers know and what they do collectively, must bewilder even the student of politics. Common sense and public conduct still seem rather distant acquaintances. That haughty baron, municipal practice, even now often fails to recognize municipal science when they meet. Great public works continue to be located and constructed, costly and inconvenient systems of collection and distribution persist, almost as if city planning related to the moon. We know that smoke is both unnecessary and wasteful, but it continues to darken our days and corrode our lungs. We shut our eyes to fetid slums, bad housing, and over-crowding, but lavish millions on new hospitals, asylums, and prisons in which to store their obvious product. Axioms of administration, universally accepted, are applied everywhere except to cities. There the citizen generously permits partisan considerations to determine rewards and punishment for the municipal personnel, at the same time grumbling bitterly about inefficiency. Indeed the sacrifice of cities in general to the national parties is still the rule rather than the exception, in spite of all the preaching and the shouting. A thousand strange futilities and follies continue to irritate and puzzle us, a multitude of unnecessary evils to reduce our enjoyment of life.

Why this mysterious lagging of practice behind science and even behind common sense?

To accomplish anything, one has first to decide what he wishes to accomplish. As democracies must act through political parties, the determination of a municipal objective would seem to be the function of the chieftains controlling the local party

[1] A paper read before the American Political Science Association at Cincinnati, Ohio, December 28, 1916.

machinery. These men are not the monarchs but the servants of their organizations. The members of the organizations, like everyone else, want power, money and place. That is the reason they are members. They get leaders who will deliver a part at least of what they want. Leaders who do not deliver are quickly decapitated. Still the organization chief must not endanger his ticklish position as housekeeper to that free and easy but irritable millionaire, the public. He must not too obviously sacrifice his patrons' tastes and resources even for his own wolfish political children. He can not afford on their account to establish real economy in the household, nor does he dare risk his master's ire by serving strange and exotic foods requiring close attention and long mastication. Not for him the wild, free existence of the political reformer. His motto is "Safety First." Hence the function of leadership, of forcing worth-while objectives to the front, which belongs under our theory to these political chiefs, is not performed by them but by irresponsible volunteers through city clubs and kindred organizations. Their discussion and agitation tend to create opinion favorable to some municipal objective which in a highly diluted and meager form these political caterers may sometimes be cajoled into adopting and offering the public.

The fact that our system places great power in hands necessarily timid and selfish constitutes one serious obstacle to progress. The cause and remedy are easily stated, but the cure will require both a long process of time and more political exercise by the patient. Burghers of today dislike political work, just as the Florentines and the Milanese hated to perform military duty, and they have hired these political *condottieri* to do it for them. Of course, the captains and armies look after themselves first. Political work on top of the day's work is too much for our hard-driven burghers. Furthermore, political disappointments have made them cynics. Whatever tends to restore their faith tends to improve the quality of our leadership. Faith in the efficacy of action will induce participation and participation, attention. Attention will bring about the adequate reward of good service and the punishment of bad. Political

leadership will then command prestige as well as power, and men of the highest character and abilities will compete for it.

But let us assume that the forces now tending to produce material and sluggish leaders have ceased to operate and that practical idealists trained in all the wisdom of the Political Science Association have come into power, studied their city, ascertained its needs and determined on the proper objective. These new leaders have now the job of finding nominees capable both of being elected and of carrying out the plan. Here is a difficulty. Few men who might be up to the job are out of one. Short terms, low pay, restricted powers are poor lures, particularly as heavy expense and fierce fighting are required to attain them. But if qualified men can be searched out who are so blind to their own interests or so morbidly patriotic as to be willing to enter the prize ring of politics, it is improbable that they will be politically available. Few men of spirit can live without expressing themselves emphatically on hot questions and without fighting in many causes. Fighting makes enemies and expression a record, neither of which are desirable in a candidate. There are other considerations. All elements of the population, except indeed native born Americans, are politically clannish and large fractions are influenced by religious preferences and prejudices. Winning is the necessity. There is temptation, often yielded to, to postpone technical qualifications to political. Often, therefore, victory ushers in nothing more than incompetence and stagnation. Our idealistic leaders must be strong enough to resist such temptation, form plans contemplating years of struggle and disappointment and stick to them, meanwhile by miracles of persuasion maintaining themselves in party control. Where these saintly supermen are to be found and by what inducements kept on the job, is a matter of some difficulty.

When at last success is attained, and candidates really qualified are elected, a difficult dilemma will confront them at the very outset. The men who have fought and bled to put them in power will not be satisfied with the sweet consciousness of a patriotic duty nobly performed. On the contrary, the fierceness of the demand for every available post will be astounding. It

is seldom that these warriors include men qualified as department and bureau heads, and it is usually the case that the incumbents have fought the victorious forces tooth and nail throughout the years of struggle. If the newly elected officials determine to retain the experienced incumbents and to sacrifice considerations of loyalty to themselves and sympathy with their official purposes, they will not be permitted to carry out these highminded intentions without a bitter conflict. The party organization will apply pressure at every available point, and unless concessions are made in the matter of patronage, will probably succeed in wrecking the main objects of the administration. The influence of the organization with the city or state legislature will prevail on them to bring the city officers back to earth by refusing desired legislation or by withholding appropriations.

When our newly elected city executive has pondered on this dilemma and has determined, as he usually does, to prefer his friends to his enemies, it is necessary to decide who is worthy of reward. If the official himself passes on all cases, he will spend his entire time on wearisome inquiries into the party service of the applicant. If our officer tires and ask for the *visé* of some qualified party leader he will build up that leader's power at the expense of his own. The loyalty of the appointee will be to the man whose recommendation gets him the job rather than to the appointing officer. He will regard the latter as fleeting and the party leader as the permanent institution which it pays to serve. This is a matter of no little consequence. The executive may have conflicts within the party or within the administration in which the support of his party organization will be all important. If he can command this support and not have to purchase it by some concession, he will be much better equipped for success. Usually, however, the burden of other duties compels the executive to accept the endorsement of the party leader, if the applicant on a superficial sizing up seems to be qualified. Naturally the party leaders are under terrific pressure and are often forced to recommend men qualified politically but not otherwise.

Many posts, therefore, which might be powerful agencies for

progress are filled by men neither sympathetic with the administration's plans nor technically equipped to carry them out. The rank and file of municipal employes under civil service feel merely a perfunctory interest in the plans of their superiors. They are convinced on substantial evidence that rising in the service through merit is next to impossible. Furthermore they dislike having their philosophic calm broken in upon by neurotic reformers. Hence the administration is apt to resemble an army of lotus eaters commanded by fiery and passionate generals. After inspecting their forces and considering the political terrain, the commanders are often much inclined to become lotus eaters themselves. But if they have been so indiscreet as to promise something definite, something more than a "square deal," they must bestir themselves and so look about for ways and means to proceed.

The first and most pressing problem is to secure the approval and support of the people for the administration's program. Of course, the fact of election carries with it a certain amount of approval, but this partakes more of the approval of the spectator than the driving conviction of participants and fellow-laborers in a common cause. It is necessary to secure a more serious and calmer consideration than was possible in the hurry and excitement of the campaign which a large fraction of the population regards in the light of a sporting event, partaking of the elements both of a dog fight and of a horse race. When it is over and the winners receive their prizes with the expected pomp and panoply, this large fraction turns the part of its attention remaining after the serious demands of life are met to the movies, theatres and sporting pages. They have neither the strength nor the desire to consider budgets, housing ordinances, city plans or anything else requiring mental effort. The extent of this between-campaign detachment is difficult to overstate. It constitutes one of the great obstacles to progress. The subject matter of the politician's labors is not stone or brick, of course, but men and women whose conduct is controlled by their wills and ideas. It is not possible to drag them or lift them. Their reason must be convinced or they must be made to feel

some dominating impression. In some manner their cooperation must be secured. To secure adequate attention is an advertising problem of the first magnitude. If finally a fair degree of attention is secured our officers must present their case with the nicest calculations for existing prejudices, class feelings and political fallacies,—work for historians, economists, actuaries and psychologists.

Among these fallacies the idea that government is business and that the application of business methods is what is needed leads many well-meaning citizens into error. It is true that in the processes of administration business methods, that is up-to-date methods of organization, accounting, purchasing and financing are applicable. But the functions of government and of business are very different. The end of democratic government is that the people themselves accomplish their collective desire. The end and object of business is to secure a reward for the performance of some particular service to society. With government the essence of the matter is the furtherance of the popular will. With business the dominant idea is the securing of the largest possible price. If we make the democratic nature of government our pole star, our course will necessarily diverge from the path of efficiency. When successful war is the dominant end, the principles of democracy are suspended. So it will be necessary to depart from democracy if our goal is the efficient performance of municipal functions at the lowest cost. Democratic government involves division in opinion, the formation of parties and organizations to mobilize them, the reward of the victors with place and power, the waste of change, the influence of popular ignorance, prejudice and indifference, the clog of statutes and of publicity for all official plans and acts. Business may plan and act freely, swiftly, secretly and directly. Business values are concrete, quickly discernible and measurable in money; political values are vague, complex, slow of development, and difficult to trace. Rewards in business are fairly commensurate with the service performed, but in politics uncertain and usually inadequate. In business the ever present desire for what money will buy drives intelligence to an ardent

efficiency. In government such uncertain factors as the increase of popular interest and intelligence, emotional appeal, and increase in economic pressure are necessary to concentrate attention on government and so promote efficiency. Political action on the fallacy that government is business leads men to attempt to deny democracy its opportunity, to promote machines, to embrace specious and short-lived governmental devices in the hope of securing efficiency by short cuts and in spite of democracy.

Out of this fallacy grows the idea that it is safer and preferable when all things are considered to entrust power to unofficial leaders than to officers elected by the people. This belief arises out of what is deemed to be self-interest. Public-utility officers find it more convenient to do business with political leaders than with public officials. Their shareholders are made acquainted with and tend to follow this preference. Political leaders are reasonable; they can be talked to without the constant intrusion of newspapermen and the fear of the public. The very processes whereby they have risen to leadership have tended to make them conservative and to disillusion them with regard to the abilities of democracy. The corporate interests believe that the substitution of direct government for government through organization leaders would result in raids on them, that public officers could not resist the pressure of the so-called mob for at least a partial confiscation of their property or would persecute them through the police power.

The friends of unofficial power, therefore, wish to sustain everything tending to hamper and limit the power of the people. They are found in every election supporting the machine. They resist efforts to simplify charters, as they wish governmental machinery to be as cumbersome and ineffectual as possible. When it is proposed to enlarge the powers of municipal officers, this element becomes furiously aroused and charge about screaming "socialism." They believe that their taxes will be increased, their income from public-utility stocks reduced, and indeed their judgment is probably correct. They are supplemented by the members of the dominant political organization,

whose vocation would be destroyed were democracy substituted for their oligarchy, and by belated worshippers of eighteenth century doctrines, such as the theory that checks and balances and a multiplicity of elective officers make for democratic control.

A further fallacy which exerts a considerable and adverse influence on municipal progress is the idea that politics is degraded and something that no virtuous individual in his right mind will touch. The fact is that political conditions in any American city will reflect with mirror-like fidelity the standard of conduct of its people. Greed, indifference to wrong, obscenity, ignorance, lack of imagination, and cynicism will be faithfully reflected in the municipal government. Business codes, particularly, control in large measure the conduct of municipal officers. If politics in any city is corrupt, business in that city is also corrupt. Men who refuse to do any political work for fear of soiling their pure souls should enter a monastery. Such men forget that the conduct of public officers is scrutinized by their political opponents and by a press greedy for sensations, whereas few stronger guards than conscience watch over business virtue. This fallacy of the degradation of politics tends to deter the men who are best qualified from entering political life. The university graduate who has had civic duty preached to him feels that political activity involves loss of prestige, besides being a bore, involving contact with persons socially undesirable and uninteresting. He salves his conscience by reminding himself that he votes his convictions and dismisses the subject. The influence which he might exert through party councils and party work is lost as his mere vote means no more than that of the lowest negro. His training in history and government, on which society through the colleges has spent much labor and money, serves no purpose but that of sterile individual culture. To get these men to return in service what society has given to them in trust, the prevailing attitude toward political service must be altered. If opinion were that political work is honorable and that men who make sacrifices of opportunities for business and pleasure to achieve political objects are not cranks or something worse, there would

be some increase in political enlistment among university men. If political service could be given the same social prestige as military or naval service, there would be an increase of many fold.

Class interests, of course, exert a very considerable influence on the political conduct of city dwellers and on municipal government. Party loyalty yields generally to material interest. The political conduct of public-utility shareholders will be determined in large measure by the administration's attitude toward their companies, and these shareholders are usually numerous and powerful enough to make their influence felt. Unless the administration's efforts have had time to ripen into some conspicuous benefit to the consumers, which seldom happens in the short terms of American public servants, there will not be a corresponding gain from that quarter which is usually not keenly observant. Other class and business groups and organizations complicate the situation by sacrificing citizenship interest for immediate group interest. A dollar of increased expense often seems to mean more to the automobile clubs and real estate associations than a ton of civic efficiency or a ten point drop in the death rate.

Religious prejudices are also potent factors in municipal elections and serious obstacles to municipal progress. Traditional fear and hate growing out of the thirty-years war and the Spanish Inquisition still dominate the political action of considerable fractions of our electorates. Societies exist for the express purpose, in large part, of making this fear and hate politically effective against communicants of other churches who are candidates or against public officers adjudged by these modern *Femgerichte* too friendly to their enemies. Hair-trigger judgments in secret and *ex parte* proceedings and on the flimsiest hearsay evidence are communicated furtively to members, and are executed by thousands of them on election day. The public officer against whom this machinery is set in motion is not aware that he is guilty of anything, that he is charged with anything, or that any judgment has been entered against him until a few hours before the election, when it is too late to take measures in defense.

In addition to the difficulties described, our idealistic leaders

will have to contend with their political enemies who will struggle day and night to frustrate and undermine them. If the hostile forces control the press or part of it, they will falsify and ridicule the policies of the administration and minimize their accomplishments, endeavoring at all times to create in the minds of the people an impression of failure and futility. The enemy's high command will direct the organization rank and file to strive to create the same impression by conversational means wherever they may go. Careful, intelligent administration will seldom show any quickly obvious or spectacular results, hence these efforts at depreciation are often effective. Just as it was difficult to imagine anything good coming out of Nazareth, so it is difficult for municipal partisans to imagine anything good coming from the other side. A part of the depreciation is sincere and therefore all the more effective.

To this cheerful catalogue of internal obstacles and difficulties must be added those brought about by outside interference. The city is the Cinderella of the political family. The elder sister, the state, dictates what the city shall and shall not do, fixes the city's revenues, not neglecting to appropriate large portions thereof to her own use, and to distribute other portions for the benefit of her favorites, the rural communities. In the distribution of what is left, the county is preferred to the city. As a result of this vassalage municipal economies accomplished by much sacrifice are often nullified by corresponding increases in state and county appropriations and municipal officers are forced to bear the burden of the tax-payers' indignation.

As our practical idealists bark their shins on these and other difficulties, they are forced to evolve means to avoid and reduce them. As each city differs from every other in municipal history, topography, needs, and potentialities, each city must be studied separately if a correct program is to be arrived at. There is no cure-all for municipal ills, nor any one high road to desired ends. Such of the obstacles to progress described as arise from defective political machinery may be much reduced by charters drawn to fit the particular city it is to serve. Its provisions for municipal ballots, nominations, and elections should be so drawn

as to encourage the formation and political action of organizations having a political and municipal objective. No emblems or party names having a national, state or otherwise irrelevant significance, should be permitted on the municipal ballot. Such provisions will not at once rescue cities in the clutch of strong party organizations. These organizations are the most powerful political engines in the community, and they will not fly to pieces in a day. The same crafty but myopic leaders will retain control. The rank and file will still be actuated by the same material motives, and the resultant evils will persist for a time. Yet there will take place in these organizations a slow disintegration due to the removal of governmental assistance. As issues, really municipal, arise and as organizations form on municipal divisions, the national party voters no longer guided by the standards on the ballot of their national parties, will feel and act more municipally and logically and less nationally and sentimentally. As the national party organizations lose power from this defection, their sordid influence will be reduced.

A charter can make the task of securing qualified nominees much easier. If able men can be offered terms long enough and and powers large enough to enable them to work out their plans, and pay commensurate with the labor, skill and risk involved, they will often embrace the opportunity to serve their city. Agitation for a charter, discussion of its provisions and the possibilities it will open, concentrate public attention on municipal government and induce the participation of greater numbers in political effort. Political work will cease to be the exclusive province of a class. Men who consider association with national party organizations damaging, will embrace an opportunity to act with their equals for municipal betterment. Contact with the sin stained national organizations and with their blackened and horribly scarred veterans may be happily avoided. The charter may even initiate an era of comparative good feeling and urban cooperation. So long as nothing more promotive of discord than administrative efficiency is the general object of the community, this era will tend to endure.

A charter will not, of course, remove those obstacles to prog-

ress incident to American urban democracy itself. The clannishness of foreign elements in the population, prejudices arising from religious differences, the pressure on attention of our complex and exacting social and industrial life will not be substantially altered. Nevertheless a charter drawn with regard to facts may well avoid some at least of the results of these factors. Attention to the minutiae of administration ought not to be exacted of the people. Modern city dwellers are not, as some reformers seem to imagine, Athenian aristocrats, living on the labor of others and thus possessed of leisure to participate in all municipal business and pass with judgment on all municipal questions. They are subject to all the forces of modern life tending to distract attention, confuse judgment, and paralyze action. Their desire is to get competent agents to transact their municipal business for them, troubling them with matters of detail as little as possible. They wish to be consulted only when some matter really worthy of their aggregate attention is to be determined. So far as administration personnel is concerned, they are willing to leave it in the same hands, if capable, indefinitely. Charters so drawn as to require popular attention only when worth while will secure a better attention when it is required. While class and group interest will still determine the political conduct of large masses, a charter will tend to force these demands into the open for analysis and discussion. This would be an undoubted improvement over the present system of secretly blackmailing or buying political leaders or public officers.

In general, a charter would give democracy a better opportunity to accomplish those of its desires consistent with our present industrial social and legal system, than is possible under legislative codes and political systems evolved for the very purpose in large part of frustrating democratic desires. When municipal machinery and institutions exist which are as perfectly designed for the city's use as may be in a world of error, everything possible to political philosophy has been accomplished. It remains for religion and education so to influence the people who constitute the vehicle's driving and guiding force as to make it move them forward.

LEGISLATIVE NOTES AND REVIEWS

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Powers of the Lieutenant-Governor. The constitutions of thirty-five of the forty-eight States provide for the office of lieutenant-governor, and in thirty-four States he is ex-officio the presiding officer of the senate. Both the office itself and the functions which the incumbent is required to perform seem to be in conscious imitation of that provision of the Constitution of the United States creating the office and prescribing the duties of the vice-president.

The lieutenant-governor is elected at the same time, in the same manner, for the same term, and must possess the same qualifications as the governor. In most States his compensation is the same as the speaker of the house of representatives; in some States the salary is fixed independently; in others it is the same as or double the salary received by a senator.

The primary constitutional function of the lieutenant-governor is to succeed to the governor in the event of his death, removal, absence, disability or impeachment. The secondary constitutional function of the lieutenant-governor is to preside over the deliberations of the senate and incidentally to give the casting vote in case of a tie. Other additional ancillary functions sometimes conferred include the right to participate in debate, to vote when the senate is in committee of the whole, and to serve as a member ex-officio of the governor's executive council. The constitution of the State of Washington is unique in that the general legislative assembly is authorized in its discretion to abolish the office of lieutenant-governor.

The lieutenant-governor, then, has an undoubted right to preside over the deliberations of the senate and to give the casting vote in case of a tie. But both of these powers are vague, elastic and susceptible of manifold and conflicting interpretations. There is a constitutional zone, bounded by a somewhat shifting and elusive periphery, within which the exercise of his authority is unquestioned; there is also a debatable hinterland into which he has not infrequently made

incursions for political purposes in response to the urgent demands of his party.

As a result of the general elections of 1916, the lieutenant-governor in the State of Indiana is placed in a strategic position this year. The senate is evenly divided, there being twenty-five Democrats and twenty-five Republicans. As party lines are somewhat sharply drawn, it seems that the lieutenant-governor may be called upon to determine some rather important questions in case of deadlock, and interest in the whole subject of his powers and prerogatives has been revived. This note is confined exclusively to a discussion of the powers and duties of the lieutenant-governor as the presiding officer of the senate, and the precedents chiefly relied upon to establish the postulates set forth are those which have been developed and evolved in the State of Indiana.

There are two provisions in the Indiana constitution which define the powers of the lieutenant-governor. Section 25 of Article IV which treats of the legislative department of the government provides that "A majority of all the members elected to each house shall be necessary to pass every bill or joint resolution." Section 21 of Article V, which deals with the executive department of the government, provides that "The lieutenant-governor shall, by virtue of his office, be president of the senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects, and, whenever the senate shall be equally divided, he shall give the casting vote." An examination of these two provisions will disclose that there is an obvious conflict of meaning and it is necessary to construe them together in order to determine their exact import. As they have never been judicially construed by a court of this State, it is necessary to rely on precedents to ascertain the interpretation which the senate itself has placed upon this provision.

According to the best established and most authentic precedents the lieutenant-governor, if he is physically able to be present, is entitled to preside at the opening session of the senate; to take the initiative in perfecting an organization; to direct a call of the hold-over senators; to receive the certificates, administer the oaths, and admit the newly elected members to their seats. The right to exercise this power, however, has not passed unchallenged. There are cases on record where the lieutenant-governor was successfully denied the right to function as presiding officer until the organization of the senate was completed, on the somewhat metaphysical assumption that a senate is

not a senate until it is organized. The admission of newly elected members to their seats is purely a ministerial and not a discretionary function of the lieutenant-governor, since members presenting properly viséd certificates, are assumed to be duly elected until their colleagues determine otherwise; and although precedents can be cited in which the lieutenant-governor declined to admit regularly certified members, on the theory that their certificates were insufficient, this usurpation of power was promptly and justly rebuked.

The powers of the lieutenant-governor as a moderator are, of course, considerable. He may recognize or refuse to recognize members; he is required to sign all bills which have passed both houses and are ready for the inspection of the governor; in many cases he appoints the committees of the senate, a prerogative which enables him to advance or retard legislation; he appoints all special committees and committees on joint conference. Where the precession of bills is not regulated automatically, he may hand down bills for consideration in any order he chooses or ensconce them in a secure place in his office to expire for want of action. At all joint meetings of the two houses he takes precedence over the presiding officer of the lower house and officiates at the counting of votes or other joint legislative action. He is enabled to promulgate rulings which will temporarily or permanently disarm his political opponents and place his own party in a strategic position. He usually participates in all caucus meetings of his party and assists in perfecting the party program and in consolidating the party strength; and he may, on invitation of the senate, actually serve as a member of certain committees.

The most controverted of all powers conferred on the lieutenant-governor is his right to vote when the senate is a tie. Generally speaking, it is safe to say that the lieutenant-governor may, if the necessity arises, vote on any proposition which may come before the senate except the passage of bills and joint resolutions and the adoption of constitutional amendments. Moreover, this right is mandatory and not permissive and if required to vote by the senate he is obliged to do so. Among the propositions on which the lieutenant-governor may vote in case of a tie the following may be enumerated with a tolerable degree of assurance: the indefinite postponement of bills; laying bills on the table; amending bills, even where appropriations are involved; recommitting bills with instructions; taking bills from the files; referring bills to select committees; laying amendments to bills on the table; concurrence in engrossed amendments to bills; adoption of senate resolutions;

amendment of resolutions; indefinite postponement of resolutions; laying resolutions on the table; amendment of the rules; laying rules on the table; temporary adjournment; fixing a date to adjourn sine die; addition of members to a select committee; concurrence in reports of standing special committees; reference of reports of standing committees to other standing committees; refusing to grant requests of senators to be excused from voting; appeals from his own decisions; adoption of resolutions declaring a contestant entitled to a seat; and the election of officers.

The lieutenant-governor can not vote on the passage of a bill or a joint resolution where the adoption of the latter is similar to the passage of bills. So far as the writer is aware, this question has only once been judicially determined. In 1907, a joint resolution was under consideration in the general legislative assembly of Michigan providing for the submission to the electors of the question of nominating the governor, lieutenant-governor and United States senators by the direct vote of the people. The resolution passed the house by a substantial and unquestioned majority. In the senate, which consisted of 32 members, 16 votes were cast in favor of the measure and 16 votes were opposed. Thereupon, the lieutenant-governor gave the casting vote and declared the resolution adopted and it was subsequently approved by the governor. By virtue of certain provisions of the resolution, the secretary of state was required to perform certain ministerial duties which he declined to perform on the theory that the resolution had not passed the senate. The constitution of Michigan at that time was substantially identical with that of Indiana. Section 19 of Article IV of the constitution of 1850 provided, among other things, that "no bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house." Section 14 of Article V provided that "the lieutenant-governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division, he shall give the casting vote."

The question at issue involved an interpretation of these two sections. The question found its way to the Supreme Court and in the case of Kelly vs. Secretary of State (112 Northwestern, 978), the court held that since the lieutenant-governor is not an elected member of the senate, he has no authority to vote on the passage of bills and joint resolutions and that therefore the measure in question was null and void for want of a constitutional majority.

In the revised Michigan constitution of 1908, it is definitely provided that the lieutenant-governor shall have no vote (Article VI, section 19).

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Direct Legislation in 1916.[1] Aside from electing a President of the United States, United States senators in 32 States, representatives to congress in every State, and many state and local officers, 38 States in the Union at the last election passed upon proposed changes in their constitutions or upon measures submitted under the initiative and referendum. In these 38 States, there was a total of 173 measures voted upon; of which 96, or approximately 55 per cent were adopted. These 173 proposals included 86 constitutional amendments proposed by legislatures; 31 initiated constitutional amendments; 24 laws referred by legislatures; 14 laws referred by petition; 15 initiated bills; and 3 questions of sentiment voted upon in a number of representative districts in Massachusetts, the result to serve to instruct representatives from those districts in the general court. Louisiana with 18 amendments led with the greatest number of proposed constitutional changes. California, which in 1914 had 48 measures on the ballot, has this year only 7. Thirteen measures, submitted in Alabama, Georgia, Louisiana and South Carolina, were purely local in character, yet it was necessary that they be voted on by the electorate of the entire State. In Oklahoma and Minnesota, 8 constitutional amendments and measures were defeated for lack of a constitutional majority of all the votes cast at the election, and considerable doubt prevails about the validity of a ninth in Illinois, although every one of the measures received an overwhelming majority of the votes that were cast on it. The amendments and measures as usual covered the whole catalogue of public issues.

Taxation and finance. Of all issues, taxation and finance was the subject of the greatest number of proposed changes, and there were submitted 27 measures bearing directly upon this subject. Amendments providing for the classification of property for purposes of taxation were voted on in four States, namely, Illinois, South Dakota, Utah and Montana. In Illinois the amendment received a majority of 360,516 of the votes cast upon it, yet there is a controversy as to whether, under the constitution, a majority of all votes cast at the election was

[1]For referendum in constitutional conventions see p. 110.

given,—the state canvassing board, holding that only a majority of the votes cast for members of the legislature is required, has ruled that the tax amendment was adopted. If, however, the amendment must receive a majority of all the votes cast at the election for governor, it has failed by approximately 15,000 votes. A test of the validity of the amendment in the supreme court is now awaited. Since 1818, when the State was admitted to the Union, there has been no fundamental change in the taxing system of Illinois, although twice an overwhelming majority vote has been cast in favor of a proposal to give the legislature power to devise a new taxing system. A constitutional amendment in South Dakota, providing for the classification of property for assessment at different rates and for the taxing of incomes and franchises, failed, as did also a tax amendment in Utah providing for classification and a whole new revenue scheme for the State. In Montana a constitutional amendment providing for the creation of a county board of equalization and a state board of equalization and permitting the latter to require the same rate of assessment on the same classes of property in different counties, was adopted. An initiated measure proposing to abolish the Colorado tax commission and to transfer its powers and duties to the state board of equalization failed to carry. In Louisiana, a constitutional amendment creating a board of state affairs of three members was adopted. The amendment makes it the duty of the board to assess all taxable property throughout the State uniformly and gives it such powers as may be conferred by the legislature in respect to assessment, budget, income and expenditures.

The budget system for state revenues and expenditures was adopted in Maryland. The amendment as passed requires that the governor shall present to the legislature a budget giving a complete plan of proposed expenditures and estimated revenues for the two succeeding years showing clearly any surplus or deficit in state funds. The governor may, except where the amount is fixed by law as in the case of public schools, revise the estimates presented to him either by state officers or state-aided institutions. The legislature may not increase the estimates presented by the governor or pass any additional appropriation act except by a majority vote; but may reduce items except the provision for the state debt and for the judiciary.[1] In Washington, a measure providing for the budget system for the raising and expenditure of revenues by counties, cities, towns, townships, port districts, school districts and metropolitan park districts, which was passed by the

[1] See pp. 113–114.

legislature and ordered referred by petition, was overwhelmingly defeated. Two States considered the single item veto power of the governor. In Oregon, such an amendment was adopted, while in Minnesota the proposal to extend the governor's power of veto to any part of any item in appropriation bills failed.

The single tax, which has been twice rejected by the voters of California in the past four years, appeared again on the ballot and was again rejected. It is interesting to note, however, that 260,332 Californians favored this system of taxation. In Oregon a measure providing for a full rental land tax and at the same time a home maker's loan fund was defeated. The electors in Oregon voted to adopt a measure providing for the limitation of the taxing powers in the State and limiting the power of counties to incur indebtedness. An amendment was rejected in Alabama which would allow certain cities and towns to vote on increasing city taxes for general purposes, not exceeding 1 per cent of the value of property in the towns. Another amendment carried in Alabama providing for reapportionment of taxes in the city of Selma.

Six States considered the question of tax exemptions. The voters in Arizona did not approve of a long list of proposed exemptions including federal, state, county and municipal property, public debts of all political subdivisions, property of widows up to $2000 and property of educational, charitable and religious organizations. An amendment failed to carry in Montana which also would have exempted federal, state, religious and charitable property from taxation and which, in addition, would have authorized the legislature to exempt from taxation evidences of debt secured by mortgages upon real or personal property. Hereafter, in Florida, property to the value of $500 of every widow who has a family dependent upon her for support and of every resident of the State who has lost a limb or has been disabled in war or by misfortune, will be exempted from taxation. Louisiana voted to exempt all ships engaged in oversea trade, if domiciled in a Louisiana port. It was voted in Oregon that all vessels of 50 tons or over should be exempt from taxation. Georgia, however, will continue to collect a tax on ships owned in the State and trading overseas.

In two States amendments were adopted on the subject of indebtedness of cities. In Louisiana two such amendments provided for the funding of certain debts of the cities of Shreveport and New Orleans and also of the school board of the latter, the purpose being to take up the floating debt and put the finances of these cities on a cash basis.

An amendment approved in South Carolina allows the city of Anderson to increase its bonded indebtedness to an amount not exceeding 15 per cent of the value of its taxable property. Authorization was given Louisiana municipalities, parishes and wards to levy special taxes for the maintenance of fairs. Another amendment in Louisiana which won at the polls gives the legislature authority to enact general laws authorizing parishes, wards and municipalities to levy special taxes in aid of public improvements, transportation lines and navigation canals, with the consent of the property tax payers. The Louisiana state penitentiary was permitted by vote of the people to fund its indebtedness not exceeding $400,000 at not more than 5 per cent.

Bond issues carrying millions of dollars for various purposes were submitted to the voters for their approval or rejection in 7 States. There was a total of 10 such measures and all except the one in Montana for the purpose of starting a twine factory were approved. As a result, California will issue and sell state bonds in the sum of $15,000,000 for the construction of the uncompleted portion of the system of state highways prescribed by the state highway act of 1909; New York State will issue bonds in the sum of $10,000,000 for the acquisition of lands for state park purposes; and New Jersey will construct and improve the highways of the State to the extent of the approved bond issue of $7,000,000. Three bond issues were carried in Rhode Island—$850,000 for institutions, $300,000 for bridges, and $130,000 for an armory. The Charleston, South Carolina, school district was authorized to vote bonds to an amount not exceeding $250,000 for new school buildings; and Kershaw County in the same State may increase its bonded indebtedness for the erection of school buildings by submitting the question to the electors of the district. The amount of bonded indebtedness of the State of Nevada was raised from $300,000 to 1 per cent of the assessed valuation of the State in order to obtain money from the federal government for good roads.

Prohibition and the regulation of the liquor traffic was an issue in many States at the last election and was voted for both ways. Michigan, Montana, Nebraska, South Dakota, Idaho, Missouri, Arizona and California voted on state-wide prohibition, and as a result the first 4 States were added to the dry territory making a total of 23 dry States. Idaho adopted a prohibition constitutional amendment after ten months experience under statutory prohibition, and Arizona approved a similar amendment, having been dry by statute since 1914. In addition to

these States, Alaska was voted dry and Florida and Utah elected legislatures and governors pledged to immediate statutory prohibition. Missouri, outside of St. Louis, gave a majority of 15,000 for prohibition. Of the 2543 counties in the United States, 2188 were dry, either by statute or local option following the last November election. It is claimed now that only 40 per cent of the total population of the United States lives in wet territory and this wet territory is now reduced to 15 per cent of the total area of the United States.

Arkansas overwhelmingly turned down the proposal to substitute local option for prohibition and local option was also defeated in Arizona and Michigan. California had a second amendment on the liquor question providing for partial prohibition in 1918, but this too was turned down. South Dakota, besides adopting state-wide prohibition, voted down a liquor measure which would have provided for the issuance of permits for the sale of intoxicating liquors and for the signing and filing of petitions for election on the subject of the sale of liquor. Vermont voted on the question as to the time when the state-wide prohibition law should go into effect and decided it for the year 1927. Oregon, by a decided majority, refused to permit the manufacture and regulated sale of 4 per cent malt liquors and furthermore voted to prohibit entirely the importation of intoxicating liquors for beverage purposes. The State of Washington by a vote of nearly 6 to 1 refused to sanction officially the "hotel men's" initiative bill, which provided for the manufacture and sale of 4 per cent beer for export or sale direct to individuals within the State. By a vote of more than 2 to 1 Colorado turned down the proposal to permit the manufacture and sale of beer in unbroken packages direct to the consumer. The electors vetoed a second initiative measure in Washington known as the "brewery bill," which attempted to weaken the prohibition laws of the State by removing restrictions on home consumption, authorizing the brewing of malt liquors, regulating the sale by manufacturers and hotels and providing for brewery, hotel and sales agent licenses. In North Dakota, a referendum measure more clearly defining "bootlegging" was adopted. This measure was designed to do away with taxicab men serving as go-betweens in the liquor traffic. An initiative measure repealing and abolishing the Sunday closing law was adopted in Oregon.

Suffrage. Amendments granting suffrage to women were voted on in 3 States. Iowa voted against such an amendment, and adverse decisions were also returned in West Virginia and South Da-

kota. Oregon voted on the repeal of the section of the state constitution which denies the right of suffrage to negroes, Chinese or mulattoes. This old state law has, of course, been abrogated by the fifteenth amendment to the Constitution of the United States, but the Oregon electorate did not give a majority to remove the inoperative section. An amendment failed in Louisiana which proposed to make women eligible to the office of factory inspector and to any office connected with eleemosynary, penal and correctional systems of the State.

Initiative, referendum and recall. The subject of the initiative, referendum and recall in one form or another was before the voters in 5 States. Minnesota again polled a big majority on the amendment providing for the enactment of legislation (including constitutional amendments) by means of the initiative and referendum, but the measure failed for lack of a constitutional majority. In Arizona the attempt failed which would require initiative measures to receive a majority of the total vote of electors voting at an election. Washington electors strongly voted "no" on two proposals limiting the initiative, referendum and recall by requiring that petitions be signed before registration officers and otherwise amending the present laws. In Massachusetts a vote of sentiment as to the adoption of the initiative and referendum was taken in 37 representative districts of the commonwealth, the result to instruct representatives from those districts in voting for such an amendment to the constitution. The proposition carried in every district. An amendment failed in Arkansas which proposed to change the present initiative and referendum law by making it mandatory for the legislature to secure a two thirds vote before a measure adopted by the people can be repealed and also to provide that a unanimous supreme court decision be necessary before the initiative law can be declared unconstitutional.

Elections. Questions relating to elections were voted for in 11 States. South Dakota failed by only about 300 votes to adopt the "Richards" primary law. An act relating to the nomination of candidates for public office at primary elections, providing for the election of delegates to party conventions and providing for the adoption of party platforms failed in Washington. The State of Arkansas, prior to the adoption of the initiated primary election bill at the last election, had no primary law which the courts would recognize or under which they would enforce any rights. An amendment to the California direct primary law of

1913 governing nominations at primary elections failed to pass. The amendment would have permitted the elector to declare his party affiliation at the polls instead of when registering, and provided that any such elector must cast his vote for candidates of that party only and for present non-partisan offices. In case the elector did not declare his party affiliation he could vote for non-partisan offices only and the election officers before delivering the ballot to the elector were required to cancel such portions as the elector was not entitled to vote. A referred act preventing voters of one political party from voting in the primaries of another party was adopted in Massachusetts. Vermont voted for giving immediate effect to a direct primary law.

An initiative measure that failed in Oklahoma, although it received a majority of the votes cast upon it, would have abolished all existing election boards and provided for a state election board of three electors selected one each by the state chairman of each of three political parties casting the greatest number of votes at the last preceding general election. Iowa decided to give the legislature power to fix the date of the fall election so that in case congress changes the time of the national election the state election can be changed to the same date. A second initiative measure in Oklahoma, relating to registration, failed for lack of a constitutional majority. This among other things aimed to prevent the legislature from passing any law concerning registration of electors by providing the initiative as the only method to enact such a law. An amendment based on the "grandfather clause" failed in Florida, which, had it passed, offered the probability of litigation extending to the United States supreme court. The requirement that only tax payers be allowed to vote on questions of finance in the State of Washington was defeated.

Several States voted on measures affecting in various ways their state legislatures. Arizona, by a 2 to 1 vote, failed to abolish the state senate. The Alabama legislature will continue to hold quadrennial sessions instead of biennial as proposed. There will be no re-apportionment of the state representatives in Florida, nor will Arizona have a legislative redistricting. Hereafter a senator or member of assembly in California cannot, during his term, hold or accept any other employment under the State unless it be some office given him by vote of the people. The legislature of Michigan, by an amendment, was authorized to repeal local acts passed prior to the adoption of the new constitution in 1907. Limitation was placed upon the powers of the

legislature in Louisiana in respect to river and harbor improvement and navigation districts.

The application of the merit system to appointments in the civil service of the State of Colorado was not approved by the electorate. Two proposals, creating a department of labor and establishing the office of state architect and superintendent of buildings, failed in Arizona. In Nebraska an amendment was turned down which would have brought the office of state food inspector under the provisions of the constitution and made the term of office six years. A referendum measure in Washington likewise failed which related to the government and powers of port districts of the first class, made certain elective officers ex officio port commissioners and provided for the sale of port district property. A constitutional amendment relating to the duties of the auditor and treasurer of the State of Utah was decisively beaten.

On the subject of salaries and fees, States voted both ways. The South Dakota legislature cannot by a concurring vote of two-thirds of the members of each house fix the salaries of state officials as it was proposed to allow them to do by constitutional amendment. The salaries of superior court justices in four counties in Georgia were increased and the fees of the solicitors-general in the same State were abolished as a result of the election on two amendments. The district attorney of the Orleans parish was placed on salary and deprived of his fees. The legislature of Louisiana was authorized to fix salaries of sheriffs, assessors and clerks of courts. In one county in Alabama, provision was made for the salaries of the probate judge, sheriff, tax assessor and tax collector. An amendment failed in West Virginia which would have raised the pay of each county commissioner to $4 a day providing this did not exceed $400 per year and providing the compensation might be increased in any county by the vote of that county.

Three amendments relating to charters and special legislation were adopted in North Carolina. Two of these will prevent the general assembly from granting special charters to corporations, towns, cities and incorporated villages, and the third restricts local, private and special legislation.

Considerable attention was given to the courts. South Dakota voters rejected a law referred by petition providing for a five-sixths jury

verdict in civil cases. Although both amendments received a majority of the vote on the question, Minnesota can neither increase the size of the supreme court from five to seven members nor extend the terms of probate judges from two to four years because neither measure received a constitutional majority of the total vote at the election. The governor of North Carolina, in order to prevent delays in trials, was authorized to appoint emergency judges to hold courts when no regular judge is available. The provisions of the organic law relating to juvenile courts were extended to all parishes in Louisiana, and in the Orleans parish the judges of the civil district court were given control over the expense fund and authority to fix the tariff of costs and to regulate the number of employees. An amendment affecting the jurisdiction of appellate courts carried in Georgia; as did also an amendment giving the general assembly authority to create local offices and courts in Bacon County, the latter amendment also making provision for the issue of county bonds to the extent of $100,000.

An Illinois amendment to the banking law designed to prohibit one bank from using a name similar to another or the name or the location of an established bank, was adopted. Alabama approved an amendment placing savings depositors in state banks and other depositors who stipulate for interest upon the same basis in case of a bank failure as non-interest depositors. South Dakota voters rejected two complete banking codes, one initiated by the bankers and the other by the Democrats of the State.

Education and schools came in for a large share of legislation by popular vote. Colorado, Minnesota, Nevada and Wyoming voted on the subject of investing public school funds in farm mortgages and all four States adopted such amendments. The Nevada amendment further provided for investment of school funds in bonds of Nevada counties. Idaho voted to allow 100 sections of school lands, instead of 25 sections, to be sold in any one year, which sections are to be sold in subdivisions of 320 acres to any individual, company or corporation. The only measure that the voters in Texas had to pass on was an amendment authorizing the legislature to enact a law empowering the counties to levy a special tax up to 50 cents on $100 for schools, and to empower common and independent school districts to levy a tax up to $1 on $100. The amendment was defeated by a narrow margin. The electors in Arkansas voted to permit school districts to vote a maximum of 12 mills for school purposes instead of 7. Alabama voters gave

to any county the right to decide for itself whether or not an extra tax of not exceeding 3 mills should be levied for educational purposes. The location of a new normal school at Dickinson, North Dakota, was approved; but the establishment of the Pendleton Normal School in Oregon, together with the location of certain other state institutions, was not ratified. An amendment providing that the limitation as to area of school districts in South Carolina should not apply to Spartanburg County, but giving the general assembly power to prescribe such area in that county was adopted in that State. An act authorizing cities to maintain schools of agriculture and horticulture was voted on and accepted by 36 cities in Massachusetts.

Highway legislation was not omitted. A referendum providing for state and county aid in the construction of highway bridges carried in Maine. The State of Wyoming was permitted to aid or engage in the construction or improvement of public roads and highways, also to devote proceeds of grants of land to internal improvements specified in grants. The state highway act of California of 1909 was amended to provide that whenever the state engineering department might determine that the construction cost of state highways in counties entailed an unjust burden on the county in refunding to the State the entire bond interest on bond proceeds spent therefor, such county should be required to refund only such portion thereof as the department should adjudge reasonable. One of the two amendments to receive a constitutional majority in Minnesota provided for state development by setting aside $250,000 to improve unsold state lands by building roads and ditches and by clearing timber land. Any county in Arkansas may now authorize the 3 mill road tax for a period as long as thirty years instead of two years. Louisiana voters granted New Orleans the right to construct, through the Belt Railroad, bridges and tunnels across the Mississippi River. On the subject of street and sidewalk improvement, the constitution of South Carolina was amended to allow the town of Mullins to assess abutting property for such permanent improvements if two thirds of the owners of property abutting upon the street order it, on condition that the corporate authorities pay at least one half the cost; and the town of Clinton and the city of Easley were empowered to make similar improvements if a majority of the property owners order it under the same conditions. In Rhode Island a constitutional amendment was adopted authorizing condemnation proceedings for specific purposes. Minnesota failed to permit the acquiring of outlets to private drainage ditches by condemnation proceedings.

A majority of the vote in Minnesota was registered, but to no avail, in favor of authorizing the State to mine under public lands or streams. A measure repealing the tax which has been levied over the last three years for the erection of terminal elevators and substituting instead a small appropriation for investigation of the project carried in North Dakota. The Orleans Levee Board of Louisiana was empowered to construct and maintain levees along the bed of Lake Pontchartrain, and was permitted to appropriate property along the lake front as it now does along the river front. An endeavor was made in South Dakota, but did not meet with success, to authorize the lease of state lands for a period longer than five years. In the same State an amendment was adopted authorizing the legislature to provide for the irrigation of agricultural land.

All railroad companies operating in the State of Louisiana are hereafter required to maintain general offices in the State, and further, all railroads and other transportation lines of the State must serve free officers of departments of the State engaged in the dissemination of knowledge relative to scientific agriculture. A measure prohibiting any public utility from entering a field of service of an existing public utility rendering a similar service until it shall have received a certificate from the public service commission authorizing the same, failed by a 4 to 1 vote in Washington.

An interesting note in the list of amendments proposed in the various States was the reflection of the agitation in favor of a rural credit system which would be of real aid to the farmer. Missouri, Oregon and South Dakota adopted such legislation. A measure which failed in Colorado on the subject of stock running at large would have made owners liable for all damage done by such stock. A fish and game law was adopted in Arizona and a uniform state-wide game law went down to defeat in Mississippi.

Colorado voters approved an initiated measure providing humane care and treatment for the insane. The appointment of a board of regents to have charge of all institutions maintained for the care of the insane in South Carolina was approved. The voters of North Dakota provided for the establishment of a new state hospital for the insane, the location of which is to be determined later by the legislature. Missouri will grant pensions to the blind following the favorable vote on

that referendum. On the question of the advisability of establishing old age pensions of a non-contributory character in Massachusetts, 4 representative districts voted instructions to their representatives to favor such legislation. One other district cast a similar advisory vote to abolish all civil pensions now paid, including those paid to members of the judiciary but excluding police and firemen until such time as non-contributory old age pensions be established in Massachusetts. Pensions of confederate veterans in Louisiana shall not exceed $25 per month—an increase of the amount now allowed.

Under labor legislation, Maine adopted a referendum limiting the hours of employment of women and minors in workshops to fifty-four hours a week. Arizona voted on a workmen's compensation act but failed to adopt the measure. An act defining picketing and prohibiting interference with the conduct of business by picketing met defeat at the hands of Washington electors.

An act referred by the legislature regulating the practice of medicine in the State of Colorado was adopted. In Oregon, an initiative measure prohibiting compulsory vaccination received a large vote and failed of adoption only by a very small majority.

An initiative bill to allow boxing in the State of Montana failed. An amendment providing that certain fraternal beneficiary societies may operate without maintaining a ritualistic form of government was defeated in Michigan. It was also proposed and carried in Massachusetts to make January 1 a legal holiday.

Capital punishment was abolished by a majority vote of 152 in the State of Arizona. The same State cast an adverse vote on the proposal to amend the divorce law so as to provide for six months' residence.

A tabulation of the constitutional amendments and initiative and referendum measures together with the official vote thereon follows.

ARTHUR CONNORS.

Indiana Bureau of Legislative Information.

Votes in constitutional and legislative measures

SUBJECT	STATE	VOTE[7]	
		For	Against
Taxation, finance, etc.	Illinois, Classification[1]	656,298	295,782
	South Dakota, Classification, incomes, franchises[1]	43,793	55,568
	Utah, Classification, exemptions, limitations[1]	14,957	55,133
	Montana, Classification and equalization[1]	74,257	60,839
	Colorado, Reorganization state tax commission[4]	80,362	84,011
	Louisiana, Creating state board[1]	34,012	20,909
	Maryland, Budget[1]	77,478	37,100
	Washington, Budget[6]	67,205	181,933
	California, Single tax[4]	260,332	576,533
	Oregon, Full rental land tax[4]	43,390	154,980
	Oregon, Limitation[4]	99,536	84,031
	Alabama, Limitation for certain cities[1]	41,686	44,780
	South Carolina, Limitation, city of Anderson[1]	13,903	3,128
	Alabama, Reapportionment of taxes, city of Selma[1]	50,373	43,492
	Arizona, Exemptions[1]	14,296	16,882
	Montana, Exemptions[1]	48,656	83,198
	Florida, Exemptions[1]	20,859	12,641
	Oregon, Exemption of ships[1]	119,652	65,410
	Georgia, Exemption of ships[1]	34,087	36,156
	Louisiana, Exemption of ships[1]	31,279	15,507
	Louisiana, Indebtedness, Shreveport[1]	31,612	15,268
	Louisiana, Indebtedness, New Orleans[1]	31,767	17,098
	Louisiana, Public improvements[1]	31,139	14,113
	Louisiana, Fairs[1]	31,778	15,948
	Louisiana, Indebtedness state penitentiary[1]	30,501	15,032
	Minnesota, Single item veto[1]	136,700	83,324
	Oregon, Single item veto[1]	141,773	53,207
Bonds	California, $15,000,000 for highways[2]	542,239	137,107
	New York, $10,000,000 for state parks[2]	650,212	499,889
	New Jersey, $7,000,000 for highways[2]	188,888	99,638

SUBJECT	STATE	VOTE[7]	
		For	Against
Bonds	California, Interest on bonds[6]	483,151	152,910
	Nevada, Increasing to 1 per cent for highways[1]	16,368	6,752
	Rhode Island, $850,000 for institutions[2]	33,657	5,694
	Rhode Island, $300,000 for bridges[2]	30,481	6,801
	Rhode Island, $130,000 for armory[2]	28,543	9,449
	South Carolina, $250,000 for Charleston schools[1]	14,423	3,152
	South Carolina, Increase for Kershaw County[1]	17,175	3,845
	Montana, For twine factory[2]	68,059	79,158
Prohibition, state-wide	Michigan[4]	353,378	284,754
	Nebraska[4]	146,574	117,132
	Montana[1]	102,776	73,890
	South Dakota[1]	65,338	53,340
	Idaho[1]	90,576	35,456
	Arizona[4]	28,473	17,379
	Missouri[4]	294,288	416,826
	California[4]	436,639	538,200
	Vermont, As to time of going into effect[2]	18,653	32,142
Prohibition, limited	Colorado, Permitting sale of beer in packages[4]	77,345	163,134
	Oregon, Permitting sale of 4 per cent malt liquors[4]	85,973	140,599
	Washington, Permitting sale of 4 per cent beer[5]	98,843	245,399
	California, Partial in 1918[4]	461,039	505,783
	Washington, Regulating[5]	48,354	263,390
	North Dakota, Safe-guarding[6]	51,673	42,956
	Oregon, Importations[4]	114,932	109,671
	South Dakota, Regulating and providing for elections on[6]	49,174	54,422
Local option	Arizona[4]	13,377	29,934
	Michigan[4]	256,272	378,871
	Arkansas, Substituting local option for prohibition[5]	58,064	109,697
Sunday closing	Oregon, Abolishing[5]	125,836	93,076

SUBJECT	STATE	VOTE[7]	
		For	Against
Suffrage	West Virginia[1]	63,540	161,607
	Iowa[1]	162,683	173,024
	South Dakota[1]	53,432	58,350
	Oregon, Negroes, Chinese, etc.[1]	100,027	100,701
	Louisiana, Eligibility of women for certain offices[1]	17,636	33,132
Constitutional convention	Massachusetts[2]	217,293	120,979
	New York[2]	504,250	656,051
	New Hampshire[2]	21,649	14,518
	Tennessee (Special Election Aug. 1916)[2]	64,393	67,342
	South Dakota[1]	35,377	56,432
	Colorado[5]	53,530	69,579
Initiative and referendum	Minnesota, Adoption of[1]	187,711	51,544
	Arizona, Requiring majority vote on initiative and referendum measure[1]	18,356	18,961
	Washington, Limiting[6]	62,117	196,363
	Arkansas, Safe-guarding[4]	69,817	73,782
	Massachusetts, Adoption of (advisory in 37 districts)[2]	74,043	20,331
Recall	Washington, Limiting[6]	63,646	193,586
Elections	Washington, Primary[6]	49,370	200,499
	South Dakota, "Richards" primary law[2]	52,410	52,733
	Arkansas, Primary[5]	93,970	46,696
	California, Primary, non partisan[6]	319,559	349,723
	Massachusetts, Primary. closed[2]	209,624	150,050
	Vermont, as to time of going into effect[2]	25,418	22,188
	Oklahoma, Election boards[4]	147,067	119,602
	Iowa, Change in time of holding[1]	267,739	139,780
	Oklahoma, Registration[4]	140,366	114,824
	Florida, Qualifications of voters[1]	10,518	19,688
	Washington, Qualifications of voter.[1]	88,963	180,179
Legislature	Arizona, Abolishing state senate[4]	11,631	22,286
	Alabama, Biennial sessions[1]	42,946	51,284

SUBJECT	STATE	VOTE[7]	
		For	Against
Legislature	Florida, Reapportionment of state representatives[1]	10,258	17,774
	Arizona, Redistricting[4]	15,731	17,921
	California, Ineligibility of members to other office[4]	414,208	230,360
	Michigan, Repeal of old local acts[1]	283,823	275,701
	Louisiana, Limiting power as to improvements[1]	30,232	15,274
Civil service	Colorado, State appointments[4]	62,458	96,561
State offices	Arizona, Department of labor[4]	13,798	21,492
	Nebraska, Food inspector[4]	91,215	105,993
	Arizona, State architect[4]	10,010	25,960
	Washington, Port commission[6]	45,264	195,253
	Utah, Auditor and treasurer[1]	18,103	42,416
Salaries, fees, etc.	South Dakota, State officials[1]	39,169	61,225
	Georgia, Superior court judges[1]	38,623	21,967
	Georgia, Solicitors general[1]	50,358	17,981
	Louisiana, District attorney[1]	29,176	14,753
	Louisiana, Sheriffs, assessors and clerks of court[1]	39,655	16,340
	Alabama, Judge, sheriff, assessor, collector[1]	53,207	41,411
	West Virginia, County commmissioners[1]	80,674	130,073
Charters	North Carolina, Preventing special to corporations[1]	56,345	22,250
	North Carolina, Preventing special to cities, etc.[1]	55,783	22,681
	North Carolina, Restricting local, private and special[1]	57,465	22,171
Courts	South Dakota, Five sixths jury verdict[6]	49,601	51,529
	Minnesota, Increase of members[1]	130,363	108,002
	Minnesota, Extensions of term[1]	186,847	72,361
	North Carolina, Delays[1]	56,721	23,132
	Louisiana, Juvenile[1]	29,764	15,026
	Louisiana, Funds, costs, number employees, etc.[1]	28,768	15,340

SUBJECT	STATE	VOTE[7]	
		For	Against
Courts	Georgia, Jurisdiction[1]	40,673	16,794
	Georgia, Created in Bacon County[1]	49,237	16,448
Banks	Illinois, Regulating names of[2]	421,259	174,494
	Alabama, Failures[1]	51,996	44,034
	South Dakota, Code initiated by bankers[2]	47,715	52,205
	South Dakota, Code initiated by Democrats[2]	47,925	50,226
Education, schools, funds, etc.	Minnesota, Investment in farm mortgage[1]	211,529	56,147
	Wyoming, Investment in farm mortgage[1]	41,798	3,861
	Colorado, Investment in farm mortgage[5]	102,956	66,058
	Nevada, Investment in farm mortgage or county bonds[1]	17,482	5,167
	Idaho, Sale of school lands[1]	64,973	38,044
	Texas, Special tax for[1]	122,040	129,139
	Arkansas, Increasing rate for[4]	108,173	52,175
	Alabama, County tax levy for schools[1]	69,341	47,543
	North Dakota, Establishing normal school[1]	60,582	43,334
	Oregon, Establishing normal school[2]	96,829	109,523
	South Carolina, Limitation of districts[1]	17,423	3,818
Highways	Maine, State and county aid[2]	96,677	14,138
	Wyoming, State to engage in[1]	43,643	2,987
	Minnesota, $250,000 appropriation for[1]	240,975	58,100
	Arkansas, Increasing time of 3 mill tax[4]	82,753	67,656
	Louisiana, New Orleans[1]	33,420	14,421
Street improvements	South Carolina, Assessment for, in Mullins[1]	17,191	3,817
	South Carolina, Assessment for, in Clinton and Easley[1]	17,314	3,753

SUBJECT	STATE	VOTE[7]	
		For	Against
Condemnation of property	Rhode Island[1]	31,709	6,786
	Minnesota[1]	132,741	97,432
Mines	Minnesota[1]	183,597	64,255
Levees	Louisiana[1]	30,446	16,157
Railroads	Louisiana, Offices[1]	30,338	15,694
Public utilities	Washington[6]	46,820	201,742
Transportation	Louisiana, Free to certain officials[1]	30,426	15,847
Terminal elevators	North Dakota, Repealing tax for[6]	51,889	47,035
Lands	South Dakota, State term of lease[1]	41,379	61,748
	South Dakota, Irrigation[1]	58,775	44,238
Rural credits	Oregon[4]	107,488	83,887
	South Dakota[1]	57,569	41,957
	Missouri[4]	296,964	346,443
Stock	Colorado, Running at large[5]	85,279	155,134
Fish and game	Arizona[5]	17,518	16,849
Game	Mississippi[2]	24,615	74,290
Insane	Colorado, Humane care and treatment[5]	164,220	39,415
	South Carolina, Board of regents for[1]	20,566	3,721
	North Dakota, Location of hospital[1]	49,001	44,356
Pensions	Missouri, Blind[2]	385,627	296,964
	Louisiana, Veterans[1]	49,081	11,215
	Massachusetts, Old age (advisory vote in 4 districts)[3]	9,708	2,216
	Massachusetts, Abolishing (advisory vote in 1 district)[3]	971	506
Capital punishment	Arizona[5]	18,936	18,784
Divorce	Arizona[5]	13,564	18,097
Labor	Maine, Hours of labor[6]	95,591	40,252
	Arizona, Workmen's compensation[4]	18,061	21,255
	Washington, Anti-picketing[6]	85,672	183,042
Vaccination	Oregon[5]	99,745	100,119

SUBJECT	STATE	VOTE[7]	
		For	Against
Medicine	Colorado, Regulating practice[2]	96,879	82,317
Boxing	Montana[5]	72,162	76,510
Fraternal beneficiary societies	Michigan, Regulating[4]	225,220	349,810
Holiday	Massachusetts, New Year's Day[2]	312,678	113,142

[1] Constitutional amendment referred by legislature.
[2] Legislative act referred by legislature.
[3] Question submitted by legislature for vote of sentiment.
[4] Initiated constitutional amendment.
[5] Initiated act.
[6] Legislative act referred by petition.
[7] In several States the official vote given does not include the vote of the soldiers on the border but in no case will these returns affect the passage of any measure.

Constitutional Conventions. In six States the voters decided at recent elections on the question whether or not there should be held constitutional conventions to rewrite the constitutions of those States. Four States, namely, New York, Tennessee, Colorado, and South Dakota, defeated the proposal, while Massachusetts and New Hampshire voted to hold such conventions. An initiative petition providing for calling a constitutional convention in 1918 was circulated in Nebraska prior to the last election but for lack of the required signatures did not get a place on the ballot. In New York State a constitutional convention was held in the summer of 1915, but the entire work of the convention was rejected by the voters of the State at the polls at the November election in the same year. The New York voters, this year, seemed unwilling to go to the expense of calling another convention, especially since the vote was so overwhelming against the adoption of the new constitution only last year.

In Massachusetts the voters decided by the overwhelming vote of 217,293 to 120,979 in favor of holding a constitutional convention and Governor McCall has recently issued a proclamation fixing the first Tuesday in May of this year for the special election of delegates to the convention. The work of revising this, the oldest state constitution, will be followed with keen interest by the whole country. The present basic law of the commonwealth dates back to 1780, for the Massachusetts constitution has never been rewritten. Fifty-four amendments

have been adopted during the one hundred and thirty-seven years. The number of delegates to be elected will be 320, of whom 16 will be elected at large, 4 from each of the sixteen congressional districts, and 240 from the representative districts throughout the State, each district to be entitled to as many delegates as it has representatives. Nomination of candidates for the office of delegate to the convention will be made by nomination papers without party or political designation, which must be signed in the aggregate by not less than 1200 voters for each candidate for delegate at large, by not less than 500 voters for each candidate from a congressional district, and by not less than 100 for each candidate from a representative district. It may be necessary to hold non-partisan primary elections for delegates in the State at large or in some districts in case the number of persons nominated by nomination papers exceeds three times the number to be elected in the State or in the separate districts, in which case the primary will be held on the first Tuesday in April. The closing date for obtaining signatures is March 6. A very important point in connection with the convention which has already risen is whether the new constitution will be submitted in its entirety or by separate specific amendments. Minds are divided on this question, but an opinion from the supreme court justices is expected to settle this. The convention will begin its work in Boston on the first Wednesday in June. The delegates each receive a compensation of $350.

In a number of other States, including Indiana, Illinois, Kansas, Minnesota and Nebraska, organized movements for new constitutions have been on foot for some time; and it is certain that a number of legislatures in 1917 will vote on resolutions providing for calling constitutional conventions. ARTHUR CONNORS.

State Budget Systems. The struggle for responsible financial administration brought three State budget systems into operation during the sessions of 1916. New York and New Jersey passed budget laws and Maryland submitted a constitutional amendment which was adopted by the people by a large majority at the last election.

New York. In view of the close attention which was given the budget system in New York in the constitutional convention of 1915, the legislation of that State is of particular interest. The constitutional provision which was adopted by the convention, but was defeated along with the rest of the constitution provided for an executive budget by which the governor would submit to the legislature an itemized budget, and no item could be increased from that given by the governor.

Governor Whitman stood out strongly for an executive budget bill during the session of the 1915 legislature. The budget system adopted however, is far from an executive budget. It provides in fact only the machinery for a legislative budget, and the governor's only duty in the matter is to present a statement of the full amount of the appropriation desired by each department or office, and to make suggestions regarding reductions or additions. He may also submit estimates of the revenues of the State.

The legislative machinery for the budget consists of two clerks, one appointed by the chairman of the finance committee of the senate and the other appointed by the ways and means committee of the assembly. Each receives a salary of $4000 a year and expenses. Additional employees are authorized.

The duties of the clerks are to collect information and data relating to departments, offices, institutions, etc.; prepare and make available information and tables concerning appropriations; procure and make available statistics as to the revenue of the State; maintain permanent records of information and data collected; investigate and report on request from the committees; and make such investigations as may be desired by the committees in the preparation of the annual budget and the preparation and revision of appropriative bills.

The financial committee of the senate and the ways and means committee of the house are continued during the recess of the legislature. Sub-committees may be appointed for gathering information on the financial needs of the departments, institutions and offices. Clerks and assistants of the finance committee of the senate and the ways and means committee of the assembly, acting together or separately, prepare and submit to the houses by March 15, a budget containing a complete and detailed statement of all appropriations to be made. An itemized and detailed estimate of the proper revenues of the State is also required, and either may be accompanied by such statements and information as the committees may deem advisable to present. The committees are required to report a single bill to their respective houses.

The senate bill is to be sent to the committee of the whole and in the assembly is to be advanced to the order of second reading and at least five full days are to be given to its consideration.

The head of any department, institution or office may appear and be heard and answer inquiries.

Amendments may be heard in the committee of the whole in the senate or on second reading in the assembly, but no amendments, except

to reduce and eliminate an item, is in order on third reading. On the third reading the bill is made a special order for at least three full legislative days in each house.

New Jersey. The New Jersey act is in the nature of an executive budget, but since the legislature may ignore it, it does not give the responsibility to the governor which is necessary in the executive budget system. All departments and offices are required by the act to submit their requests for appropriations to the governor on or before November 15. The law requires that requests be made by the judiciary and legislative departments likewise, and by any organization, body or person desiring an appropriation.

Requests for appropriations are required to be in detail accompanied by a trial balance concerning expenditures for the previous judicial year.

On November 15 the comptroller and state treasurer submit to the governor a summary of the financial condition of the State. When the financial condition and the requests for appropriations are before the governor he proceeds to prepare an annual budget. He may hold hearings and appoint officials or other persons to make investigations. He may establish a permanent committee to carry on the work. When complete the budget is transmitted to the legislature in such form as to be easily understood by the average citizen. The governor may from time to time transmit special messages requesting appropriations. No provision is made by the act for handling the annual budget in the legislature, except the requirement that there shall be established one general appropriation bill.

Responsibility is placed therefore on the executive only so far as the legislature sees fit to follow his advice.

Maryland. The amendment to the Maryland constitution provides for a real executive budget. The responsibility is placed on the governor to formulate the budget and the legislature is regulated in its procedure in enacting it. All expenditures are required to be appropriated either in a "budget bill or a supplementary appropriation bill," and the governor is required to submit to the general assembly a budget for each of the two ensuing years. Each shall contain a complete plan of proposed expenditures and estimated revenues. Accompanying each budget must be a statement showing: first, the revenue and expenditures for each of the two fiscal years next preceding; second, a record of the assets, liabilities, reserves and surplus or deficit of the State; third, the debts and funds of the State; fourth, an estimate

of the financial condition at the beginning and end of each of the fiscal years covered by the two budgets above provided, fifth, any explanation the governor may desire to make.

The budget is divided into two parts. The first is known as "governmental appropriations"—including estimates for the general assembly, the executive departments and the judiciary department; payments on principal of the state debt and the salaries payable under the laws of the State; and the cost of maintaining the public schools and other parts which are set forth in the constitution. The second part of the budget is designated as "general appropriations" and includes all other estimates of appropriations.

The governor presents the budget and the bill showing all proposed appropriations clearly itemized and classified. He may make such supplemental amendments or corrections as he desires.

The legislature is limited in its action on the budget. It may not affect the items relating to the state debt or the appropriations for common schools or the payments of salaries. It may amend a bill, increase or diminish the amounts for the general assembly and for the judiciary, but may not, except as specified, increase other items, but may reduce them. The salary of no public officer shall be decreased during his term of office. The budget bill is not subject to the approval or the veto of the governor. The governor and the heads of offices, departments and institutions have the right to be heard in respect to any appropriation. No separate appropriation may be considered until the budget bill is disposed of.

A supplementary appropriation bill shall embody only a single work or object. If the budget bill is not acted upon three days before the expiration of the regular session it is made the duty of the governor to extend the session by proclamation for such time as he may deem necessary for the passage of the bill, and no other matter may be considered during the time of the extension. The governor is given full authority in the gathering of information for the preparation of the budget for executive offices, departments and institutions. The estimates for the legislative department are certified by the presiding officer of each house and for the judiciary department are certified by the comptroller. The governor may hold public hearings and require the attendance of representatives of all agencies and of all institutions applying for state money.

Economy and Efficiency. The economy and efficiency commission of Massachusetts, established in 1912, was abolished in the session of 1916, and the duties of the officer were transferred to a single official known as the supervisor of administration. This official under the new act is named by the governor with the advice and consent of the council. His duties become largely those of the supervision of the purchase of supplies by the different offices, commissions, boards and institutions. Upon investigation, he may, with the approval of the governor and council, order changes in the method used in purchasing and make rules and regulations governing the purchase of stores, supplies and materials. Any officer who fails to comply with such orders, rules or regulations, is subject to removal by the governor with the consent of the council. On request of either branch of the legislature or of the ways and means committee of either house, or of the governor or council, or of the committee on finance of the council, the supervisor is required to make a report on any estimates by officers, heads of departments, institutions, etc., as may be required, together with such facts, suggestions or recommendations as to appropriation requests or the method of raising money for the same.

Virginia, by resolution, created a committee on economy and efficiency to make a survey of the state and local governments. This committee consists of five members, one appointed by the president of the senate from the membership of the senate, two by the speaker of the house from among its members, and two by the governor of the State. The committee is required especially to make "a careful and detailed study of the organization and methods of the state and local governments," to report to the next legislature in what way "state and local government can be more efficiently and economically organized and administered."

New Jersey, which has been working on a program of consolidation, as a part of the movement of economy and efficiency, made two notable consolidations: First, the State created a department of agriculture and transferred to it all the duties heretofore vested in the state board of agriculture, the state board of health, the state commission on tuberculosis among animals, the state live stock commission, the state plant pathologist, the state entomologist and other commissions, boards and officers relating to agricultural interests of the State and the diseases of animals, plants and insects. The new state board consists of eight citizens chosen by delegates elected by the various agricultural societies of the State. These delegates meet in convention and elect by

majority vote the members of the board. The department is organized with the following officers and bureaus: (1) a secretary for agriculture, (2) an assistant secretary for agriculture, (3) a bureau for animal industry, (4) a bureau of lands, crops and markets, (5) a bureau of statistics and inspection.

The board is given broad powers for the promotion of agriculture and agricultural interests, for the study and prevention of animal diseases and the promotion of agricultural meetings, exhibitions, fairs, etc. There is lacking in the bill, however, any responsibility to the people.

The governor has no power to appoint, remove or investigate. The ultimate power rests in the representatives of the various agricultural boards and societies which elect the delegates.

The second act for the consolidation of departments is that relating to the department of labor. As newly organized the department consists of one commissioner of labor, one assistant commissioner of labor, a bureau of inspection, a bureau of structural inspection, a bureau of electrical equipment, a bureau of hygiene and sanitation, a bureau of engineers' and firemen's licenses, a bureau of industrial statistics, a bureau of employment, and all of the work of the department is under the control of the commissioner of labor appointed by the governor with the consent of the senate.

These two acts followed the consolidations brought about two years ago by the establishment of the conservation department, and bring the work of the government of New Jersey closer to a centralized form probably than any State in the Union.

Absent Voting. Vermont is entitled to the credit of having enacted the first absent voters law. The Vermont law was adopted in 1896, five years before the earliest Kansas statute on this subject which merely permitted absent voting for railway employees. The Vermont act is the simplest and briefest of all the absent voters laws in this country. Twice slightly amended, it now reads as follows: "A legal voter in this State may vote for state officers, United States senators and electors, in any town in the State, and for representative to congress in any town in the congressional district in which he resides; provided that such voter files with the clerk of the town in which he desires to vote a certificate from the clerk of the town of his legal residence, stating that such voter's name is on the check-list last required by law to be prepared in such town."

At the present time there are at least sixteen States, comprising

about one-fourth of the population of the country, which have absent voters laws. The last of these is that of Virginia, passed in 1916. Peculiar interest attaches to this Virginia statute because it makes far more generous provision for absent voting than is to be found in any other State. It is now made possible for a Virginia voter to "vote by mail" in practically any part of the civilized world. The act provides that a voter who is "required by his regular business and habitual duties" to be absent from his "city, county and precinct" on the day of a general election or primary may file notice of his intended absence between thirty and sixty days before the primary or election, if he is to be within the United States; or between sixty and ninety days notice if he is in one of our dependencies, or "in touch with an American consulate in territory over which the United States has no jurisdiction." The scheme of providing ballots, the formalities surrounding voting, and the method of transmitting and counting the ballots follow in general the provisions of the North Dakota statute, but with certain modifications.[1] For example, the ballot, when received by an absent voter in the United States or the dependencies, is to be exhibited to any postmaster or his assistant and duly marked in his presence and certified by him; an absent voter outside the jurisdiction of the United States must go before a United States consul or his assistant; while voters in the army or navy may go before their proper commanding officer or a commissioned officer delegated by him. This Virginia absent voters law is perhaps the boldest innovation connected with our election laws since the introduction of the Australian ballot. Strange to say it has been enacted in a section of the country which hitherto has not been conspicuous for originating radical or progressive political measures.

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[1] See Am. Pol. Sci. Rev., VIII, 442 (1914).

JUDICIAL DECISIONS ON PUBLIC LAW

JOHN T. FITZPATRICK

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Banking Corporations—Liability of Stockholders. Yoncalla State Bank v. Gemmill. (Minnesota. November 3, 1916. 159 N. W. 798.) Where a state constitution expressly provides that a stockholder of a banking corporation shall not be liable beyond the unpaid par value of the shares of stock owned by him, a subsequent amendment of said provision, imposing a double liability, cannot be construed to embrace those who became stockholders prior to the adoption of the amendment. The right to regulate and control banking business under the police power cannot go to the extent of imposing an additional personal liability upon stockholders.

Chiropractic Treatment—Regulation. State v. Fite. (Idaho. October 9, 1916. 159 P. 1183.) Defendant, who is a chiropractor, had obtained no license to practice medicine and surgery. He administered chiropractic treatments and charged and received compensation therefor. These treatments consisted in the manipulation of the region of the patient's spinal column with the hands of the practitioner, and no instruments were used, nor were any drugs or medicine prescribed or given. The defendant did not hold himself out to be a physician and surgeon, nor did he recommend or prescribe any drug, medicine, means or appliance for the relief of sickness. The court held that a statute regulating the practice of medicine was intended to prevent the use of drugs, medicines, surgical instruments and appliances by persons unskilled in their use, and could not be held to apply to the practice of chiropractic.

Congressmen—Regulation of Election. State ex rel. Davis v. Hildebrant. (Ohio. April 18, 1916. 114 N. E. 55.) While the federal Constitution commits to state legislatures the right to prescribe the times, places and manner of holding elections, it also expressly reserves to the congress full and complete control of that subject. If there be

any conflict between the legislative and congressional provisions upon that subject, the latter control, and the law of congress supersedes any law or regulation upon the subject made by the state legislature.

Constitutions—Character of Proposed Amendments. State ex rel. Linde v. Hall. (North Dakota. September 11, 1916. 159 N. W. 281.) The proposal of constitutional amendments, whether by resolution of the legislature or by initiative petition, is not legislation, and involves no legislative act or province, or power of state sovereignty, but is merely a duty, ministerial in character, fixed by and to be exercised only under and by compliance with the terms of the constitution. Whether proceedings to amend a constitution are valid as performed within such constitutional limitations is a proper subject for judicial inquiry, and its determination by court decision is not an invasion by the judiciary of the constitutional functions, province and legislative duties of the legislative department of the government.

Constitutions—Effect of Nonself-Executing Provisions. Leser et al. v. Lowenstein. (Maryland. September 16, 1916. 98 A. 712.) Where a new constitutional provision is not self-executing, an existent state statute is not thereby necessarily superseded. All statutes which are actually inconsistent with a new constitution or constitutional provision are repealed by implication. The failure of the legislature to discharge a duty imposed upon it by constitutional mandate leaves valid existing laws not in conflict with its provisions.

Convicts—Terms of Imprisonment—Cruel and Unusual Punishments. Williams v. State. (Arkansas. July 10, 1916. 188 S. W. 826.) A court may not, in order to punish for contempt a convict, serving a life term, who has refused to testify against an alleged accessory after the fact, set aside his conviction, sentence him to solitary confinement for contempt, and order his return to court after serving that sentence, for further proceedings in the original cause, since the law takes into account no parts of a term of sentence, which continues from beginning to end as one term. There can be no higher punishment for contempt than that which has already been imposed for his conviction of a felony. There is no such punishment known to our law as solitary confinement. In that sense, it is an unusual punishment which is expressly prohibited by the constitution. That provision of the constitution is directed against cruel or unusual character of punishment and

not against the duration of the punishment. Where misdemeanors are punishable by fine or imprisonment any other character of punishment must be necessarily regarded as unusual.

Divorce—Domicile—Jurisdiction. Perkins v. Perkins. (Massachusetts. October 17, 1916. 113 N. E. 841.) Where the parties are married in one State and there establish a matrimonial domicile, which is retained by one spouse who is innocent of any marital wrong and who is abandoned by the other who is guilty of marital wrong, the courts of the State of the matrimonial domicile have jurisdiction over the marriage relation. A decree of divorce by a court having jurisdiction of one party, but not of the matrimonial domicile nor of the other party, is not entitled to recognition in the State of matrimonial domicile under the full faith and credit clause of the federal Constitution, but depends upon comity. Hence, a wife guilty of no marital wrong and remaining within the matrimonial domicile is not debarred from suing for divorce for desertion where the husband, guilty of a marital wrong, has, without fault on the part of the wife and without justification, abandoned the matrimonial domicile, removed to another State, obtained a domicile there, and secured a divorce.

Ecclesiastical Law—Adoption in America. Hodges v. Hodges. (New Mexico. September 5, 1916. 159 P. 1007.) When the colonies separated from Great Britain, they kept so much of the common law as was suited to their condition. But they neither brought here nor kept the ecclesiastical courts, our institutions being founded upon an entirely different theory so far as the relations of church and state are concerned. Assuming that the ecclesiastical law was a part of the common law, as commonly conceded, necessarily only so much of the same as was suited to our conditions was adopted here. There is much divergence of view as to how much, if any, of the ecclesiastical law was adopted in this country. A divorce *a mensa et thoro* originated with the ecclesiastical court of England. Whatever the theory may be as to the adoption of the ecclesiastical law in this country, it is well established that the powers of courts in matrimonial matters are to be determined entirely upon the terms of statutes conferring the jurisdiction. These statutes necessarily embody many of the principles contained in the ecclesiastical law, and resort may be had to that law for definitions and interpretations of these statutes; but the ecclesiastical law, as a system of substantive and remedial law, has not been bodily adopted in this

country as a part of our common law, because many of its features are entirely inconsistent with our institutions, and many of its principles and doctrines are unsuited to American beliefs and practices.

Family—Head of—Defined. In re Opava. (United States. October 5, 1916. 235 Fed. 779.) A family is a collection of persons living under one roof, having one head or manager; and the head of a family is one who controls, supervises and manages the affairs of the household. Within this definition, a priest of the Roman Catholic Church who lives with his sister, whom he induced to come from a foreign country and live with him, agreeing to pay over to her all his income except his personal expenses, on condition the sister maintain the household, is head of a family. He maintains a home; he is the wage-earner; he is the manager of the home; he is under moral and legal obligation to maintain her during her life; and his relations with his sister are permanent. It is her home now and will be in the future.

Foreign Corporations—Regulation. Commonwealth et al. v. United Cigarette Mach. Co., Limited. (Virginia. September 14, 1916. 89 S. E. 935.) An act which provides that corporations, chartered or organized under laws of other States or countries and authorized to manufacture articles made from metal, cotton, or wood, and to mine ores or coals, shall for all purposes be deemed and treated as domestic corporations, is not invalid as an attempt by the legislature to domesticate foreign corporations. The act merely authorizes such corporations to do business within the State, and provides that, if they do, they shall be subject to the same rules that govern domestic corporations.

Former Jeopardy. Crowley v. State. (Ohio. February 29, 1916, 113 N. E. 658.) Where a person has been in jeopardy upon an affidavit filed with the mayor of a city, the plea of former jeopardy is insufficient as a bar to a prosecution by indictment for a felony, although the facts alleged in the indictment would have warranted a conviction on the charge made in the affidavit. An acquittal or conviction for a minor offense, included in a greater, will not bar a prosecution for the greater, if the court in which the acquittal or conviction was had was without jurisdiction to try the accused for the greater offense.

Indians—Rights under Treaty with State. Kennedy v. Becker. (United States. June 12, 1916. 241 U. S. 556.) The Big Tree treaty

of 1797 reserved to the Seneca tribe of Indians hunting and fishing privileges on the lands conveyed by that treaty. Under a claim that the Indians of that tribe are not subject to the fish and game laws of the State of New York, it was held that the power to preserve fish and game within its border is inherent in the sovereignty of the States; that the reservation in the treaty was one in common with the grantees and others to whom the privilege might be extended, but subject to the necessary power of appropriate regulation by the State having inherent sovereignty over the land; and that such Indians are subject to the fish and game laws of the State, notwithstanding the reservation in the treaty. The fact that the Indians are wards of the United States under the care of an Indian agent does not derogate from the authority of the State to enforce its fish and game laws as against Indians on territory within the State and outside of any Indian reservation.

Laundry Business—Regulation. Yee Gee v. City and County of San Francisco. (United States. July 20, 1916. 235 Fed. 757.) A municipal ordinance prohibiting persons owning or employed in public laundries to do laundry work between the hours of 6 p.m. and 7 a.m. is void as an unreasonable interference with the liberty of citizens in the prosecution of a legitimate occupation, where the provision applies to all laundries maintained in the entire territory embraced within the city limits, without regard to differing conditions existing in different sections or districts thereof, the density of population or character of buildings, or the situation or relation of the laundry to other structures or premises, as calculated to cause danger of fires or other objectionable considerations. A municipality under authority of the constitution and statutes of a State may, in the exercise of the police power, regulate the conduct of any business in any respect as to that which may involve the public health, safety, or welfare, provided the regulation is reasonably adapted to their protection; but it may not, under the guise of a police regulation, interfere with the constitutional right of a citizen to carry on a legitimate business, harmless in itself, beyond a point reasonably required for the protection of the public.

Legislature—Scope of Term. State ex rel. Davis v. Hildebrant. (Ohio. April 18, 1916. 114 N. E. 55.) The law-making body, the legislature, as defined by lexicographers, comprehends every agency required for the creation of effective laws. It cannot be claimed that the term "legislature" necessarily implies a bicameral body. When

the term was originally embraced in the constitution, the legislatures of Pennsylvania, Georgia and Vermont consisted of but a single house, with a second body in each, called an executive council. The provision of the federal Constitution, relating to the election of congressmen, conferring the power therein defined upon the various state legislatures, should be construed as conferring it upon such bodies as may, from time to time, assume to exercise legislative power, whether that power is lodged in a single or in a two-chambered body, or whether the functions of the latter be curbed by a popular vote or its enactments approved by a referendum vote.

Marriage Settlements—Validity When Made According to Tenets of a Religious Faith. Goldstein v. Goldstein. (New Jersey. July 14, 1916. 98 A. 835.) A betrothal and a nuptial contract, made according to the Hebrew faith, whereby the husband bound himself and his heirs for the payment or contribution to the dower of an amount equal to that brought in by the wife, and as security therefor pledged all of his present and after-acquired possessions, without disclosing to whom or when the dowry was to be paid, is not an enforceable obligation between the husband and wife, nor does such contract create a trust in favor of the wife.

Medicine, Regulation of Practice—Treatment under Christian Science Church. People v. Cole. (New York. October 3, 1916. 113 N. E. 790.) The purpose of the statute regulating the practice of medicine is to protect persons from being treated by those who are without adequate training or education. A recognized practitioner of the Christian Science Church, who, within the rules of that church, and at his office, and for a fee charged, gives a treatment by interposing by prayer that the disease, or inharmony between the Divine Being and the sufferer, might be adjusted, it being a tenet of the Christian Science Church that such prayer could completely cure disease, gives treatment within the meaning of the statute; but if in good faith he is practicing the tenets of a church, which are the beliefs, doctrines and creeds of the church as an organization, as distinguished from an individual, he is not guilty under the provisions of this statute excepting the practice of the religious tenets of any church, and under the constitutional provision for the free enjoyment of religious professions and worship. The question whether the accused is in good faith practicing the tenets of a church and is within the exception is a question for the jury.

Military—Enlistment of Minor. Ex parte Avery. (United States. July 14, 1916. 235 Fed. 248.) The enlistment of a minor in the army is valid as to him, but is voidable at the instance of his parent or guardian, who has not consented, and he is entitled to the discharge of the minor on habeas corpus, unless there are pending charges against him which give a court-martial priority of jurisdiction.

Military and State Courts—Jurisdiction. In re Wulzen. (United States. August 25, 1916. 235 Fed. 362.) A paramount remedy for the punishment of a member of the military is provided for by punishment by the military authorities where such member, charged with disorderly conduct, has violated a state law or municipal ordinance. And this is especially so during a state of war, or during a condition of affairs when war is imminent, and the detention of the offender by the state or municipal authorities would interfere with the discharge of his duties as a member of the military. In determining the jurisdiction, the court will also take into consideration the fact that the accused was in the performance of his duties at the time of the alleged disorderly conduct, and that no malice, wantonness, or criminal intent has been shown.

Milk—Regulation of Sale. State v. Latham. (Maine. September 9, 1916. 98 A. 578.) A statute, which requires milk dealers to pay for purchases semimonthly and provides for punishment by fine on default, is unconstitutional as class legislation, and as without the police power of the State. The statute does not apply to all classes of debtors, but to one class. It does not apply to all debts incurred by purchase of products, but to one class. It requires the purchaser of milk who is a middleman or manufacturer of milk products to pay, but does not require him to pay who buys for other purposes. It gives the milk producer a strong club to aid in the collection of debts which is not given to other creditors. The discrimination is not based on any real differences in condition, or situation, or necessities concerning the public health, welfare, etc., and offends against "the equal protection of the laws" clause of the federal Constitution.

Milk—Regulation of Supply. City of Chicago v. Chicago & N. W. Ry. Co. (Illinois. October 24, 1916. 113 N. E. 849.) A city can regulate the kind of milk sold within its limits, and adopt rules and regulations indirectly affecting the production of milk outside the city

limits, by requiring the milk to be cooled immediately and kept cool during transportation. However, an ordinance regulating the transportation of milk must be practicable; and where an ordinance requires milk to be transported in sealed cans which may not be opened en route, a provision penalizing a common carrier for transporting milk in such sealed cans at a temperature of more than 55° F. is unreasonable, it being practically impossible to ascertain the temperature of the contents of sealed cans.

Municipal Corporations—Control—Powers. Booten v. Pinson. (West Virginia. December 17, 1915. 89 S. E. 985.) Municipalities are but political subdivisions of the State, created by the legislature for purposes of governmental convenience, deriving not only some but all of their powers from the legislature. They are mere creatures of the legislature, exercising certain delegated governmental functions which the legislature may revoke at will. In fact, public policy forbids the irrevocable dedication of governmental powers. The power to create implies the power to destroy. The legislature may incorporate a city even against the will of the inhabitants. Consent or acceptance is not required. It may also, without the consent of a city, change its form of government, determine the number and character of its officers, and define their powers and duties. It may provide for the qualifications of its officers, and may provide for their appointment by authority without the limits of the municipality, as by the executive of the State. It may even prescribe the mode of procedure to be observed in passing its ordinances. A municipality has no inherent political rights, for all its powers are delegated by the legislature.

Municipal Corporations—Delegation of Powers. Moll v. Morrow. (Pennsylvania. April 17, 1916. 98 A. 650.) Under a provision of the constitution which prohibits the delegation to any special commission of any power of a municipal corporation, an act, providing for the creation of a bureau of public morals in cities of the second class for the purpose of investigating and acting upon all questions and conditions affecting public morals, is invalid, where such a bureau is given the municipal powers to investigate conditions, to enforce laws, and to prosecute violations. Such a board is created to administer a part of the police affairs of the city, and is a special agency for the performance of a municipal function.

Municipal Corporations—Effect of the Adoption of a Home Rule Charter. Park v. City of Duluth et al. (Minnesota. October 20, 1916. 159 N. W. 627.) Where the constitution and general laws of a State confer upon the people of a city the power to frame and adopt its own charter, the adoption of such a charter is legislation. The authority which it furnishes to city officers is legislative authority. The people of a city, in adopting such a home rule charter, have not power to legislate upon all subjects, but as to matters of municipal concern they have all the legislative power possessed by the legislature of the State, save as such power is expressly or impliedly withheld.

Municipal Corporations—Power to Provide for Referendum. Mills v. Sweeney. (New York. October 31, 1916. 114 N. E. 65.) The provision of a city charter giving authority to the common council to enact ordinances for good government, protection of property, preservation of peace and good order, the suppression of vice, the benefit of trade and commerce, the preservation of health, the prevention and extinguishment of fires, the exercise of its corporate powers, and the performance of its corporate duties, does not confer upon the common council authority to enact an ordinance providing for a referendum on public policy questions. Such a general clause was not intended by the legislature to confer such a power upon the common council; it has been the policy of the legislature, since the recognition of the referendum in the political system, to deal with it directly and in expressed terms.

Municipal Corporations—Powers as to Public Improvement Contracts. City of Milwaukee v. Raulf. (Wisconsin. October 24, 1916. 159 N. W. 819.) A city has such powers as are expressly granted to it, and such others as are necessary and convenient to the exercise of the powers expressly granted. In the absence of statutory restriction, a city has, incident to its power to contract for the construction of public works, the same power to prescribe the conditions under which the work shall be carried on within the city that the State has. And as a part of such power, a city may limit the hours of labor on public work and may enforce the limitation by ordinance.

National Guard—Power of President to Call Out. Sweetser v. Anderson. (United States. October 18, 1916. 236 Fed. 161.) The Dick law of 1903, which authorized the President to call into the national service the national guards of the various States, was not super-

seded by the national defense act of June 3, 1916, as regards the power of the President to call out and use the organized state militia as a military force to help repel invasion and suppress insurrection. Under the act of 1916, it is left altogether at the election of members of the organized militia to sign a new enlistment contract or not, and to take an oath of allegiance to the United States or not, and to obey the orders of the President and of the governor or not, and in the event of an election not to sign a new enlistment contract and to take the oath, a militiaman is not mustered out and relieved from obligation to respond to the federal emergency call under his oath as originally taken under the Dick law. While there was doubtless no thought that the act of 1916 should be used to coerce enlistment into broader fields, it is quite as obviously clear that there was no thought that a failure to do so would operate to free the organized militia from the military service upon which its members had already entered.

Neutrality Laws—Peoples Affected. The Lucy H. (United States. May 16, 1916. 235 Fed. 610.) Section 11 of the United States Code, which makes it a criminal offense to fit out and arm, within the jurisdiction of the United States, any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, was designed to secure the neutrality of the United States, not only in wars between other nations recognized, and between contending parties recognized as belligerents, but also between warring factions, although there has been no political recognition of either as sovereign or of a state of belligerency. This intent was emphasized by the fact that the words "colony, district or people" were inserted by an amendment in 1818.

Neutrality Laws—Prizes. The Appam. (United States. July 29, 1916. 234 Fed. 389.) The provisions of the treaty with the kingdom of Prussia, which provides that the vessels of war of both parties shall carry freely, wheresoever they please, prizes taken from their enemies, and that such prizes shall not be arrested, searched, or put under legal process when they enter the ports of the other party, but may freely be carried out again at any time by their captors, apply only to prizes brought into port for necessary temporary purposes, as

in case of stress of weather, want of fuel or provisions, or necessity of repairs, and contemplate their removal to a port of the captor country as soon as the cause of their entry has been removed. Neither under such treaty nor under the doctrines of international law as generally accepted by civilized nations at the present day may a prize be taken alone by a prize crew into a port of a neutral country for indefinite asylum. Title to a prize does not become vested in the captor by the mere fact of capture, and not until lawful condemnation is had by the proper court of the captor country. An uncondemned prize, taken into a port of a neutral country for asylum in violation of its neutrality, is subject to proceedings by its owner for restitution in the admiralty courts of that country irrespective of the action of the prize courts of the captor country.

Pensions—Validity of Police Pensions. People ex rel. Kroner v. Abbott. (Illinois. June 22, 1916. 113 N. E. 696.) Pensions to officers of municipal police systems are regarded by the courts in the nature of compensation for services previously rendered, for which full and adequate compensation was not received at the time of the rendition of the services. They are, in effect, pay withheld to induce long-continued and faithful service. The public benefit accrues in two ways: by encouraging competent employes to remain in the service, and by retiring from the public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous men. Such pensions generally are not considered donations or gratuities. The rule is, in the majority of jurisdictions, that the legislature has power to require municipalities to pension their employes and to raise the funds for that purpose. Therefore, a police pension fund act does not violate constitutional provisions forbidding extra compensation to a public officer after service has been rendered or contract made, or providing that the fees and compensation of public officers shall not be increased or diminished during their terms.

Practice of Medicine—Unprofessional Conduct. State Board of Medical Examiners v. Macy. (Washington. August 29, 1916. 159 P. 801.) A definition of unprofessional conduct in the medical profession, as contained in an act regulating the practice of medicine, read as follows: "All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety."

The court held that this definition was not unconstitutional, as being so vague and uncertain as to leave the acts constituting unprofessional conduct subject to the mere personal opinion of the members of the state board of medical examiners, before whom the question of the unprofessional conduct was to be tried, and as furnishing no standard for the guidance of the board in determining what the unprofessional conduct so defined would be. The court further held that a person tried for violation of the statute was not entitled to a trial by jury; that the provision in the constitution providing for a trial by jury applied only where the right existed prior to the adoption of the constitution, so that, no provisions as to the licensing of physicians and the revocation of licenses having existed before the adoption of the constitution, a person accused of unprofessional conduct had no right to a trial by jury but might be tried before the state board of medical examiners and his license revoked by that board.

Privilege Taxes—Shoe-Shining Business. Barlin v. Knox County. (Tennessee. October 24, 1916. 188 S. W. 795.) The imposition of a privilege tax upon shoe-shining parlors, by a statute which exempts barber shops where shoe-shining is carried on, is not an arbitrary and capricious classification because of the exemption of barber shops; nor the suspension of a general law; nor the granting of rights and immunities to individuals, to wit, those conducting barber shops. The conducting of a barber shop, where shoe-shining is also done but only as a mere incident of the business, is not a shoe-shining parlor. The exemption as to barber shops in the statute is a mere surplusage. If it had been omitted, the privilege tax imposed upon shoe-shining parlors could not be exacted from one conducting a barber shop, unless the shining of shoes in the barber shop was conducted to such an extent as to become the main business there conducted.

Public Amusements—Regulation of Dancing. City of Chicago v. Drake Hotel Co. (Illinois. June 22, 1916. 113 N. E. 718.) A city, under a legislative grant of power to license, tax, regulate, suppress and prohibit theatricals, shows and amusements, has no power to prohibit by ordinance dancing in restaurants by the patrons thereof, where no fee is charged for the privilege. Such prohibition is a clear invasion of the property rights of individuals. There is nothing necessarily harmful in permitting the patrons of a restaurant to dance while the restaurant is open to the general public. On the contrary, as the evi-

dence in this case shows and the municipal court found, dancing, as conducted in public places of refreshment in the city of Chicago, has always been orderly, dignified, etc., and is in no sense a public nuisance, and is a reasonable and harmless method of amusement for the public in said city.

Public Officers—Recall. Wigley v. South San Joaquin Irr. Dist. et al. (California. July 26, 1916. 159 P. 985.) A legislature, in the absence of constitutional provision, has the power to pass acts for the recall of public officers. A constitutional provision that officers may be tried for misdemeanors in office in such manner as the legislature may prescribe does not deprive the legislature of power to provide for the recall of such officers by the electorate. Nor is an express provision of the constitution that the legislature may pass acts for the removal of certain specified officers exclusive nor does it prevent the legislature from providing for the recall of officers not specified therein.

Sunday Laws—Observance of Other Day. Krieger v. State. (Oklahoma. October 18, 1916. 160 P. 36.) The Sabbath law proceeds upon the theory that the physical, intellectual and moral welfare of mankind requires a periodical day of rest from labor, and, as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship, or rest and recreation, as this causes the least interference with business or existing customs. To require persons observing another day than Sunday as a Sabbath to refrain from work on Sunday prevents such persons from working six days of the week, and from obeying the provisions, of the religious commandment which provides that there be one day of rest and six days of labor in seven.

Sunday Laws—Works of Necessity—Barbering. Gray v. Commonwealth. (Kentucky. September 29, 1916. 188 S. W. 354.) The enactment of the statute prohibiting work or labor upon the Sabbath day is not an attempt to enforce any religious duties, but is a civil regulation, authorized by the legislature in the exercise of the police power, and where the statute excepts works of necessity, the necessity which must exist to bring the doing of any work within the exception is not an absolute, unavoidable physical necessity, but is that which the common sense of the country in its ordinary modes of doing business regards

as necessary. While the shaving of a particular person by a barber, under exceptional circumstances upon the Sabbath, may be a work of necessity, yet where a barber is simply doing his work of shaving and cutting hair of his customers and doing for them the regular service of a barber, it is not a work of necessity and does not lie within the exception of the statute. The fact that a great many of the legislatures of the States have adopted statutes making it unlawful to engage in the business of barbering on the Sabbath day would indicate conclusively that the common sense of the country, in its ordinary modes of doing business, does not regard the business and work of barbering as a necessity.

BOOK REVIEWS

Politics. By HEINRICH VON TREITSCHKE. Translated from the German by Blanche Dugdale and Torben De Bille, with an introduction by the Right Hon. Arthur James Balfour, and a foreword by A. Lawrence Lowell. In two volumes. (New York: The Macmillan Company, 1916. Pp., Vol. I, xliv, 406; Vol. II, vi, 643.)

An ultimate judgment of Treitschke will be long delayed. Like Machiavelli's, his is the sort of work about which controversy will doubtless continue to rage for many a decade. It is inherent in his method, in his *Weltanschauung*, in his specific conclusions and principles, that they should arouse the widest difference of opinion. To temperaments of one cast he will continue to be looked upon as the virile and prophetic expounder of the only true and sound principles of political action—true and sound because based upon the reality of historical fact; to minds tuned to another key he will remain the evil genius of an irrational and immoral system of crass militaristic imperialism which has cursed the world with the pestilence of senseless war and turned the wheels of civilization backwards generations in time. There is much in the point of view, in the outlook on life, with which one approaches the fundamental problems of politics. "The kind of a philosopher one is depends upon the kind of a man he is," says Fichte; and this is perhaps preëminently true in the field of political philosophy. Idealism or realism in politics is chiefly a matter of temperament.

Treitschke's work is indeed not devoid of idealism; it is rather from beginning to end the embodiment and elaboration of a single idea, the idea of the state as "the objectively revealed will of God." But this Hegelian idealization of the state is so absolutely intolerant of any other ideal; so uncompromising in the ethical conclusions which it enforces, conclusions which in many cases run counter to the present trend of thought in England and America; and so specific in its justification of political acts which appear revolting to the majority of Anglo-Saxons, that the fundamental idealism of the work is likely to be entirely lost in its character of a masterpiece of *Realpolitik*. Says August

Dorner, "The peculiar virtue of the German has from time immemorial found expression in his tendency to solve acute practical questions in connection with the profoundest principles and thus to unite the temporal and the eternal." Of this tendency Treitschke is a notable example; but the English or American reader, in actively repudiating its practical precepts, is apt to overlook the idealistic basis of the work.

Moreover, as Machiavelli's *The Prince* was completely misunderstood for generations, until modern historical research discovered the clue to its meaning in the turbulent and distracted condition of early sixteenth century Italy and the supreme need of a strong absolutism to restore order and to unite the rival and warring fragments into a single strong nation, so Treitschke will remain an enigma as long as the historical circumstances and conditions of nineteenth century Germany are not borne in mind and fully appreciated. Like *The Prince*, Treitschke's *Politics* is a *livre de circonstance*, reflecting the peculiar needs of the age and country in which it was produced. As the one embodied the political principles of the dawning epoch of the national state, so the other is the theoretical exposition of the fundamental principles of the present age of national imperialism. The glowing vision of a future age of internationalism, which dazzles the eyes of so many today, was for Treitschke the veriest will-o'-the-wisp. The state as the embodiment of power, expanding and spreading its sovereignty over the vast reaches of an imperial domain was for him the *summum bonum;* and in the conflict of states for empire, involving though it must the most terrible of wars, he saw only the necessary and beneficent working of the spirit of God in human affairs.

It is to awaken Germany to her destiny as a great world-empire, to inspire her with the vision of an imperial career, that these lectures were delivered in 1892–93 in Berlin. The work takes the form of a theoretical discussion of the nature of the state, its social foundations, its constitution and the various forms of government, and the important branches of its administration. However, it is not in its adequacy as a systematic and scientific treatise in political theory and comparative constitutional law that its chief importance lies, but in its character as an expression, the best and fullest expression, of the ideals of the present age of national imperialism, and as a tocsin-call to Germans to take their rightful place in the great conflict and strife for empire which is unfolding. "Germans are heroes born." They must rectify their unsatisfactory territorial boundaries; they must fulfill their destiny and possess the Rhine from end to end. Holland must be forced into a cus-

toms union with Germany; and Germany must become a power beyond the seas. And above all, the maritime predominance of England must be destroyed. War is the only agency by which these achievements can be accomplished, and war to Treitschke is both natural and necessary. It is "part of the divinely appointed order." "The appeal to arms will be valid until the end of history, and therein lies the sacredness of war." "It is war which turns a people into a nation."

Treitschke paints with a broad brush; his lights are high, his shadows deep. There are no half-tones on his canvas. In the German national character he sees but one defect, but that is a fundamental and most important fault, though fortunately not ineradicable. It is the lack of a strong nationalistic, imperialistic sentiment. "The Germans are always in danger of enervating their nationality through possessing too little of this rugged pride." Prussia alone among German states possesses this; and so, Saxon though he was, his adulation and praise of Prussia is unbounded. The Hohenzollerns are empire-builders, and their history is glorified in unmeasured terms. Frederick the Great "is the greatest king that ever reigned on earth." On the other hand Treitschke's prejudices against other nations are extreme. "France always fluctuates between bigotry and a false liberalism." Belgium is the "paradise of priests and the home of the phrase-makers of liberalism." "No people was ever more justly annihilated than the Poles." "Norway, with all her intolerable churlishness, presents a boorish version of English characteristics." "The once courageous race of Holland have deteriorated physically as well as morally by becoming mere money-grubbers." Of the United States he says, "There is a poverty of intellectual atmosphere over there which is not only due to a young colonial civilization. It is undemocratic if an individual's talent rises above a certain level. Real brilliance of intellect is coldly looked upon, and dollar-getting is the only sphere in which distinction is readily forgiven." "In America the weakness of law, combined with the reckless and anarchical temper of the nation, leads to methods which have something imposing in their very vileness." But it is against England that Treitschke vents his most bitter spleen. "In England after the line of blood-stained mediæval tyrants had come to an end, the hereditary villainy of the Stuarts made way for the hereditary nullity of the Guelphs, and the whole presents an abject picture. How could a true monarchical spirit flourish in a country ruled by such kings." "Some [nations] there are in whom narrowness of outlook is innate. This applies most particularly to the insular nations, and as we think to the English." "The want of chiv-

alry in the English character, which strikes the simple fidelity of the German so forcibly, is due to the fact that the English do not take their exercise in the noble practice of arms, but in acquiring dexterity in boxing, swimming and rowing." "Contemporary England is solely swayed by the interests of her commercial policy." England is the "fountain-head of barbarism in international law." "There remains the appalling prospect (in case Germany cannot establish its power beyond the seas) of England and Russia dividing the world between them, and in such a case it is hard to say whether the Russian knout or the English money-bags would be the worse alternative."

Nor are Treitschke's prejudices confined to these nations. He is violently anti-semitic; his opinion of women is absurdly and ridiculously low; his opposition to the Catholic Church is extreme; universal suffrage is a menace and the secret ballot is irrational and immoral; small states are worthy only of contempt; and even the English-American Sabbath is an institution from which he prays God to preserve the German people.

The facts which serve as the basis for Treitschke's conclusions are very often inaccurate. Titus Oates is located in the reign of James II. Pitt's proposals for parliamentary reform come after the outbreak of the French revolution, and apparently as its consequence. The reform act of 1832 is followed by *three* others. The principal ministers of the English government are said to be peers, and the means by which they are held accountable for their acts is impeachment. "After Henry VIII's hymeneal prodigies, it was enacted by the English parliament that its assent should be necessary to the validity of any royal marriage." The power of the President of the United States is "limited in its scope, being confined to the postal system, the coinage, and foreign policy." "In a hundred years America has only made one quite unimportant change in her Constitution." Of Andrew Jackson, he says, "He was a thoroughly coarse-natured man, but he was the conqueror of Texas, and his commercial policy was very much in accord with popular taste." Regarding Lincoln we find this statement: "The reverence of the masses for President Lincoln rose to such a pitch that he could perfectly well have attained to kingly power among them had he so willed it. But he was of the same stamp as Washington, and he remained a convinced adherent of democratic government."

But why multiply instances of this kind? It is clear that Treitschke is not a scientific political writer or historian. He is not to be classed with Jellinek or Redlich, with Ranke or Brunner, and any attempt to

do so entirely misconceives the real character and importance of his work. He is a John the Baptist, heralding the dawn of a new day for Germany; a modern Luther, breaking the shackles of ancient tradition, preaching the gospel of newborn opportunity, and calling the nation to a larger life of freedom and to a more devoted and strenuous effort for national self-realization; he is a German Roosevelt, awakening the sluggish impulses of national patriotism, striking the inert keys of national conscience, arousing his people to their duty and their destiny. To apply the standards of a meticulous scientific accuracy to a work like Treitschke's is like picking flaws in Shakespeare for his geographical errors. Rousseau's influence as a political writer is not to be measured by the exactitude of his knowledge or the impartiality of his opinions. The Declaration of Independence may not be able to stand the acid-test of scientific accuracy, but it will always remain the cherished embodiment of the ideals of the period of our national birth. And Treitschke will doubtless, likewise, stand out preëminently, in the ultimate historical judgment of the stirring times in which we live, as the exponent in the field of thought of the dominating political movement of national imperialism. He more clearly, more potently, than any other has formulated the ideals, the aspirations, the philosophy of the German people which lie at the roots of the present world-conflict. Judge these as we may, and however they may be judged by the historian of the future, none can deny to Treitschke a position among the great moving and influential political philosophers of modern times.

Apart from the dominating *motif* which runs through the entire work, it is of great interest for the brilliant flashes of political wisdom which fall like sparks from an emery-wheel. Treitschke's style is epigrammatic. He coins apothegms with a ready hand, and if some are counterfeit, many are unalloyed gold. One may not agree with much that he says; his entire system may be rejected; but he is always interesting and always suggestive. His is a work utterly unfitted for a text in a course in political science, but one which no student of political science can afford to ignore or neglect. It also deserves to be read widely by the general educated public which wishes really to understand the philosophical foundations of the war.

The English translation which is the subject of this review is an admirable one, and both translators and publishers are to be commended for making Treitschke accessible to Anglo-Saxon readers. The introduction by Mr. Balfour is extremely interesting as showing the

reaction of such a work as this upon an English statesman and philosopher, actively assisting as head of one of the great departments of the British government in its titanic effort to prevent the realization by Germany of Treitschke's hopes and aspirations.

WALTER JAMES SHEPARD.

Modern French Legal Philosophy. Translated by MRS. F. W. SCOTT and J. P. CHAMBERLAIN. Edited by A. W. Spencer. (Boston: Boston Book Company, 1916. Pp. lxvi, 578.)

This is the seventh volume of the Modern Legal Philosophy Series and in many respects the most useful thus far published. There are two ways in which one can try to induce an American student of law to become familiar with foreign thought on the subject. One may thrust at him a systematic treatise like Jhering's or Kohler's, which begins with fundamentals, and say to him:—"Go to it. Master this book and you will be able to reflect on your own work all the better." This may be the way of thoroughness, but it is certainly forbidding, and if the testimony of personal experience be worth anything, also barren. The other way, and the way of this volume, is to bring the student into contact with judiciously chosen representative essays or extracts which pick up the thread of the argument nearer the concrete material where the student's daily thoughts leave him. If one can thus manage to strike fire and arouse genuine interest the way for more thorough study is opened. The selections in this volume from the works of Charmont, Duguit and Demogne—especially the last—are well calculated to arouse such interest based on the recognition that they deal with really vital and not merely scholastic issues. For this reason it would have been wiser to have printed these selections frankly as extracts from larger books instead of giving the volume, by numbering the paragraphs continuously, the appearance of a systematic unity which it does not in fact possess.

It is this penchant for systematic completeness which has misled the editor to include so much from Fouillée. Fouillée was a prolific writer and a man of fine character, but his facile characterization of the French, German and English "spirit" and his peculiar doctrine of *idée-force* have been neither influential nor representative of French legal-philosophical thought. In a history of French culture Fouillée might very well be used as an illustration of the national liberalism which established the Third Republic and led to the breaking of the Concordat.

But there are certainly many portions of the works of Saleilles, Tarde, Tanon, or Haurion—not to mention Durkheim—that would have been far more appropriate for the purpose of this series.

The selection from Charmont includes the greater portion of his book, *La Renaissance du Droit Naturel*. Charmont draws no distinction between natural law, juristic idealism, and juristic individualism. Hence he finds a revival of natural law not only in the work of Stammler and Geny, but also in the juristic recognition of social solidarity, in the work of Duguit, and even in pragmatism. But while this inevitably involves a radical vagueness in Charmont's own constructive suggestions, his book is one of the most effective exposés of the practical bankruptcy of the historical and positivistic schools of jurisprudence. In the search for a satisfactory basis for the distinction between just and unjust law, the historical and positivistic schools have been able to offer us little help, and their boasted refutation of the normative standpoint of the old natural law is an illusion. They have unconsciously set up a tyrannical natural law of their own, inimical to the freedom of the individual and to legal progress. Charmont is at his best in pointing out how the ultra-positivist Duguit gets back, in spite of himself, to the normative natural-law attitude in his theory of an objective law based on social solidarity. Duguit's recent work, in spite of his professed hostility to the standpoint of "the rights of man," bears out this point of Charmont. For does not Duguit's limitation of the sovereignty of the state, and his doctrine of unconstitutional legislation, carry us far into the old natural law?

Duguit is represented in this volume by nearly one hundred and ten pages of translation from the first volume of his *Études de Droit Public* (1901). These selections give a fairly good idea of Duguit's vigorous and unconventional method of attacking the problem of the law and the state; and his criticisms of the great German publicists like Gierke or Jellinek are certainly lively and suggestive. But on some points his more recent books show a new departure, and it is a pity that they are not in any way represented in this volume. Mr. Spencer's own comments on Duguit seem to me very illuminating.

The last part of this volume consists of a translation of Book I of Demogne's *Les Notions Fondamentales du Droit Privé*. This seems to me by far the most valuable work on the philosophy of law published within the last few generations. Its value consists not only in the extraordinary wealth of ideas that fill almost every page, but even more in the wonderful way in which it steers between the Scylla of dogmatism

and the Charybdis of scepticism. A contrast between this book and any of the works of the great German jurist Stammler is very instructive. Stammler has undoubtedly brought forth several important fruitful ideas. But he seems to take it for granted that they will be valueless unless they are spun out in all directions with excessive formalism. Demogne is satisfied merely to present his ideas in a suggestive way, leaving it to the reader to make the obvious applications. Stammler works in black and white; everything is rigid and absolutely certain; there is no room in his world for any *perhaps*. Demogne realized the complexity of human affairs and the limitations of all the first principles that have been suggested as solutions for all possible legal problems. Instead of offering a new first principal of his own, he is satisfied to render the more useful service of indicating the scope of and possible applications of many of the first principles which do play a rôle in the life of the law. His discussion of the conflict between the need for security of possession and the need for security in transaction carries philosophic ideas very near men's "business and bosoms." Equally pertinent is his discussion of the various interests served by the law and the proper place in it of the principles of justice, equality and liberty. To one who regrets that the whole of Demogne's wonderful volume was not here translated, it is some consolation to reflect how difficult it is to render into English his terse and extraordinarily beautiful French.

May this volume help to destroy that widespread but foolish notion that in legal thought this country must forever remain a British colony. Perhaps it may remind us that in the creative period of American law men like Kent and Story drew heavily on French civilians like Domat, and that those framers of our Constitution that wrote the *Federalist* drew their inspiration not only from Montesquieu but also (as regards their ideas on federalism) from Mably, with whom they were more familiar than with Polybius.

MORRIS R. COHEN.

A History of Continental Criminal Law. By CARL LUDWIG VON BAR. Translated by Thomas S. Bell. Continental Legal History Series. (Boston: Little, Brown and Company, 1916. Pp. lvi, 561.)

The sixth volume of the Continental Legal History Series presents to English readers a comprehensive historical view of the criminal law of the Continent. The greater part of the book consists of the transla-

tion of von Bar's history. As von Bar's work confines itself to Germany, however, extracts from other works are translated to supplement the main text. For France the histories of E. Glasson, L. von Stein and F. Garraud are drawn upon; for Scandinavia extracts are translated from the works of Stemann, Kolderup, Rosenwinge and Larsen; and for the Netherlands there is a section from G. A. Van Hamel. In addition, the modern legislation in Germany, Austria, Scandinavia, and the Netherlands is described by Dr. L. von Thot in sections written for the purpose, and an abstract by the editor, Dean Wigmore, based on Professor Pfenniger's history of Swiss criminal law covers the field as to Switzerland.

The general history of the criminal law is taken up by periods. There are introductory sketches of the Roman law and the primitive Germanic criminal law. The history of criminal law during the Middle Ages is then taken up, supplementary chapters for the other countries following von Bar's work covering Germany. The history during the Renascence, the Reformation and the first part of the eighteenth century is then treated. The French Revolution is the next periodical division, and finally there follows the development and legislation of modern times.

Von Bar's work appeared in 1882. It is no doubt the best work available for affording a general view, but the accounts of the Roman and the primitive Germanic criminal law are now out of date. Especially with respect to the Roman criminal law has more intensive study raised many questions in regard to subjects treated with great positiveness by von Bar. The extent of the religious element as a foundation of the early criminal law and the nature of the *multae irrogatio* are cases in point. The reason given by the author for treating of the Roman law at all is the "reception" of Roman law in Germany. However, the historical sketch of Roman criminal law stands by itself, and while reference to other works is necessary for an adequate idea of that history it does not detract from the merit of the sound and scholarly account of the development of the German criminal law.

Beginning with his account of the law in the Middle Ages and bringing the story down through to modern times, von Bar's work leaves little to be desired. Not only is the development of the general criminal law traced, but much detail with regard to the growth and changes in the theories of specific crimes is afforded. An astonishing mass of detailed information has been crowded into the moderate compass of the volume. It is a mine of material for the student. To be sure a

more objective treatment would be expected in a modern work, involving more of discussion of salient features and less of a catalog of express provisions. But in a province where there is so much new ground to be broken we may well be thankful for this assemblage of facts; there will be no lack of analysis later. The supplemental material for the different countries has been surprisingly well coördinated with the main work by the editor and a comprehensive and fairly well unified survey is presented to the reader.

The second part of von Bar's work comprises a history of the theories of criminal law. There is first a chapter on ancient Greece and Rome, then one on the Middle Ages and, following, an examination and criticism of the various writers and their theories grouped as follows: from Grotius to Rousseau, from Beccaria to Fuerbach, from Bentham to Herbart, and from Hegel to Binding. Beginning with Grotius a clear account and an illuminating analysis of the theories of the principal European writers on the subject down to the time the author wrote is presented. The account ends of course before the more modern theories as to crime and punishment began to be discussed. Of the modern theories, however, there is no lack of accounts, while of the older views this is easily the most complete and clearest summary. For completeness von Bar's criticism of the various theories and elaboration of his own views is added in an appendix, although this will be perhaps the least indispensable part of the book. Much might be gained by an attention to the older theorists, instead of the summary dismissal of them which is now usual by the exponents of more modern but not necessarily sounder theories. However it is the collection of historical facts which is the essentially valuable part of this work. It cannot too often be repeated that, in the language of Justice Holmes, "in order to know what the law is we must know what it has been and what it tends to become." The conception of crime and punishment is, on the surface, so simple a department of the field of law that the tendency to make assumptions instead of carefully examining facts is stronger here than in some other departments of legal theorizing. Analysis of the origins of criminal law and of punishment based on strictly accurate determination of the facts of development instead of assumed generalizations is very much needed.

This field of investigation lies almost entirely within the historical period and historical studies must supply the material. Loose generalizations as to the origin of crime and punishment in certain institutions of primitive societies are common. Fuller investigation however

leads to doubt as to whether there is any criminal law or punishment at all in really primitive groups. Certain precursors thereof may no doubt be traced; but it would seem that for the existence of this social institution there is requisite a considerable degree of complexity in the social organization and that its genesis must be sought mainly within the historical period. There is therefore need for more intensive culture of the field of the history of criminal law. This work should be of assistance in stimulating such studies.

EDWARD LINDSEY.

Le Droit des Gens, ou Principes de la Loi Naturelle Appliqués à la Conduite et aux affaires des Nationes et des Souverains. Par M. DE VATTEL. With an introduction by Albert de Lapradelle. English translation by Charles G. Fenwick, Ph.D. Three volumes. (Carnegie Institution of Washington, 1916. Pp. xxxv, 644; 501; 463.)

The Carnegie Institution is performing a distinct service for students and teachers of international law by reprinting the original texts, with English translations, of the treatises of the leading writers on international law during its formative period. The service is a much needed one owing to the fact that most of the early treatises were written in Latin and are, therefore, closed books to all except a comparatively small number of scholars, and also because the original texts are not available in many American libraries. The work of reprinting and translating these "classics" is being carried out under the competent editorial supervision of Dr. James Brown Scott. The plan is to reproduce photographically the original text and to accompany it with an English version prepared by a competent translator, together with an introduction containing a biographical sketch of the author and an estimate of the place which his contribution occupied in the early literature and the influence which it has exerted, if any, on the subsequent development of international law. The classics so far reproduced and reprinted include the principal works of Zouche, Ayala, Victoria and Grotius, to which is now added the famous treatise of Vattel. The edition from which the present reproduction and translation were made was that printed at Neuchâtel (but dated at London) in 1758. As is well known, the founders of the American nation derived their knowledge of international law mainly from Vattel as they derived their knowledge of the English common law from Blackstone.

Vattel, therefore, like Blackstone, was generally found in every American library of note and was read, quoted and appealed to as an authority on questions involving the principles of international law and the usage of the past. Professor Lapradelle in a very interesting introduction of some forty-five pages reviews the principal events in the life and career of Vattel; describes the influence which the writings of Wolf exerted upon him; analyzes and criticizes certain of his doctrines; traces his influence on the subsequent development of international law; and estimates the authority with which his treatise was regarded in the different countries where it was read. In England it was favorably received from the first and was translated three times before 1797. In America its authority was still greater; by 1780, we are told, it had become a classic and a text book in the colleges; it was cited as the highest authority by Marshall, Kent, Story, and Wheaton; and it was relied upon by the American government in its diplomatic controversies with foreign powers. Vattel's authority in Germany was less, because there his liberal ideas did not meet with favor. Few treatises on international law have gone through so many editions and been so often translated. According to a table published in the present edition (Vol. I, pp. lvi–lix) the number of such editions amounts to twenty, while nine translations have appeared in England, twelve in the United States, five in Spain, one in Germany and one in Italy. This is an honor with which only Grotius appears to have been rewarded.

From as extended a comparison of the original text with the present translation as it was possible for the reviewer to make he believes that Professor Fenwick's task has been admirably executed. His translation appears to be accurate and it is certainly clear in meaning and attractive in style. His aim has been the only legitimate one which a translator should have, namely, to present the author's thought in good English without the literalism which spoils so many translations. Here and there are words and phrases concerning the English equivalent of which there is room for a difference of opinion, but the reviewer has found no instance of a rendering which can be said to be inaccurate.

JAMES W. GARNER.

The Enforcement of International Law through Municipal Law in the United States. By PHILIP QUINCY WRIGHT, PH.D. (University of Illinois Studies in the Social Sciences, March, 1916. Pp. 264.)

According to Arthur Balfour, former prime minister of Great Britain, "international law has no sanctions; no penalties are inflicted on those

who violate its rules. . . ." Criticism of this character, inspired largely by pessimism in time of war and revealing a lamentably superficial knowledge of the law of nations, is altogether too prevalent. We will probably have always to combat the excessively narrow Austinian conception of law as the order of a sovereign visibly enforced by a policeman in uniform. Such critics, however, have been somewhat embarrassed of late by decisions of English and American courts granting to international law the standing of law. It is evident, nevertheless, that the Austinian point of view is largely responsible for the strictures of recent critics, including even Elihu Root, president of the American Society of International Law, who have ignored, or placed too slight value on existing sanctions of the law of nations.

It is unsound, fundamentally, to berate international law for failing to regulate the conduct of war, or even to protect the interests of neutrals. War is the negation of law. The function of international law is not to regulate war, but to avert war. Its true mission is to regulate the peaceful relations of states. As regards the interests of neutrals, it is increasingly apparent that in great modern wars affecting directly the interests of the whole world, neutral nations cannot either plead indifference, or claim immunity from harm. Either they must take sides in the fight for international order; they must hold the belligerents to task by an armed neutrality; or they must suffer evils other than those of actual warfare. It is therefore erroneous and pessimistic to score international law for its lack of an effective sanction in time of war.

As regards the application of international law in time of peace, it is increasingly evident that there are powerful sanctions behind that law not visibly manifest in the uniform of a policeman. For example, there exists the great sanction of public opinion, or what Gareis has well termed "anticipated advantages of reciprocity, as well as fear of retaliation." There is an undoubted international *Sittlichkeit* of this character which consciously or instinctively demands the enforcement of an immense body of rules of international law. This is conspicuously apparent in the ordinary diplomatic intercourse of states. We usually note only the failures of diplomacy. We rarely note its triumphs, though they are many and important. Diplomacy is based ordinarily on respect for the principles and rules of international law and procedure. If diplomacy fails, and war ensues, the failure is generally due, not to the absence of a sanction for the law of nations, but to the palpable fact that society has not yet reached that stage in its development where it can justly deny the right of self-redress.

Doctor Wright, in his most interesting monograph, has vividly drawn our attention to the great, vital fact, too often ignored by students, teachers and critics, that international law constantly and most effectively finds its physical sanction in the decrees of national courts. As he forcibly points out, international law "may be enforced by municipal law either directly through the application of international law by the court and executive officials or indirectly through the coercion of persons and officers in a manner not immediately prescribed by international law but calculated to cause an observance of the international duty."

The author has most laboriously gone over practically the entire field of international law to demonstrate how completely its rules are enforced in the United States. He rather relegates to the lowly regions of footnotes the academic question concerning the nature of international law; whether it is enforced as a distinct branch of law, or merely as a part of municipal law. He is content to present his array of cumulative evidence showing that whatever its character, international law is enforced.

Doctor Wright's theory concerning the enforcement of law, as the *point de depart* of his thesis, deserves special attention. He holds that "effective enforcement of law is only possible through action by state administrative and judicial organs," and that, "international law can be effectively enforced only in so far as it prescribes conduct for persons and subordinate agencies of government." He argues that: "the essential feature of international law is not that it lays down rules of conduct for states, but that it holds states responsible for the conduct of persons." This would seem a rather too sweeping and specious assertion. The "essential feature" of any subject is usually that which best fits in with our own particular thesis. It is unfortunate that the writer has been content merely to state his theory, and has not fully stated his grounds for such a point of view. One is inclined to dissent, unless—as Doctor Wright himself suggests—all international law is to be interpreted as laying down injunctions which, though addressed primarily to states, may operate ultimately against the officials of the state.

As to the method followed by Doctor Wright, nothing can be said in criticism of the excellent scholarship evinced throughout the monograph. The author is sure of his ground. He has a firm grasp on his law, and is careful to make only such statements as can be amply substantiated. He has "played safe," and erred perhaps wisely, in not

committing himself too much "on paper." It is possible to criticize the mechanical arrangement of his thesis. The scaffolding is too much in evidence. The structure is too gaunt and creaking. Such chapter headings as "Obligations of Vindication" and "Obligations of Reparation" are awkward and pedantic.

But such criticism is of course of minor importance. The subject could have been treated under any variety of arbitrary divisions, such as jurisdiction, rights of aliens and so forth. The important fact is that the author has demonstrated in a most painstaking manner that international law is widely and diversely enforced through the municipal law of the United States. It may be said that there is nothing very original in this dissertation. Nevertheless, the writer has succeeded in reminding us rather impressively, by the cumulative evidence he has amassed, of the vital truth that international law, in spite of the pessimism and ignorance of critics, possesses undoubted and most effective sanctions. This is a profoundly encouraging fact to bear constantly in mind. Whether we hold that the law of nations has equal value with other law, or whether we believe it to be a distinct kind of law, we ought at least to recognize that within the borders of the United States, and of other nations as well, it is fully entitled to be considered as *law*.

Doctor Wright has accompanied his monograph with ample citations, a complete list of cases, and an index which, though meagre in spots, is of considerable value. It is on the whole a valuable piece of work, and reflects great credit on those members of the department of political science in the University of Illinois under whose direction the dissertation was prepared. It furthermore suggests what a fruitful field for special research by students in political science is to be found in international law, where vast material is waiting to be worked over before the great work of reconstruction in that subject can be effectively carried on.

PHILIP MARSHALL BROWN.

International Cases: Arbitrations and Incidents Illustrative of International Law as Practised by Independent States. Volume 1, Peace. Volume 2, War and Neutrality. By ELLERY C. STOWELL and HENRY F. MUNRO. (Boston: Houghton Mifflin Company, 1916. Pp. xxxvi, 496; xvii, 662.)

These volumes were prepared for the avowed purpose of providing a book for instruction in international law in courses in which the case

system is employed. The title "International Cases" is hardly appropriate; "Readings in International Law" would be a better designation, for, as the subtitle indicates, the volumes contain material other than cases. Even the subtitle, however, does not indicate the full amount of material which is foreign to a case book in the strict sense. If the word be used in the French sense of "cause" there would be less objection to its use in the present instance. Indeed it is probable that the authors had in mind the famous collection of Baron de Martens, *Causes célèbres du Droit des Gens.*

Probably the best way to get a fair idea of this new collection of material is to compare it with other well-known collections. In Martens' collection the cases and incidents selected are given at greater length and with a sufficient amount of detail to enable the reader to understand fully the points at issue. In the present collection the number of cases, incidents and extracts from diplomatic correspondence is far greater, but the material is presented without sufficient explanation of the facts and surrounding circumstances to render it in all cases intelligible. As compared with Pitt Cobbett's two volumes of *Cases and Opinions on International Law,* the collection of Stowell and Munro lacks the illuminating summaries and notes which so greatly enhance the value of the English collection. It is difficult to see how international law can be taught from a case book without the aid of such notes and comments. Scott's *Cases on International Law,* hitherto the principal American book, is a case book in the strict sense; that is, it undertakes to expound international law by adjudicated cases, omitting matters adjusted by diplomatic correspondence. A strict adherence to the case system, such as Scott's, has serious limitations, for it not only omits diplomatic incidents and important state papers, national and international, which are clearly recognized sources of international law, but, in order to cover the field by the case method, it is necessary to include a large number of decisions of municipal courts which in many cases are analogous to rather than indicative of international law. The present authors have endeavored to omit cases which are not clearly international, but they have filled the gaps by material which in some instances can hardly be designated as law or the source of law. As regards the general plan, the volumes are made up in very much the same way as Moore's *Digest of International Law,* that is, from cases, incidents, opinions, the writings of jurists, diplomatic correspondence, and other sources. The material is not, of course, drawn from American sources to the same extent as Moore's.

The authors would have done well to follow more closely the method employed by Pitt Cobbett, for many of the extracts found in the present collection are wholly misleading in their present form. In the same sections occur incidents showing the violations of international law as well as those upholding it, without a word of comment, with the result that the average reader is left completely at sea as to what the rule of law really is. For instance, take the section under the Laws of War on "Occupation," volume 2, pages 146–176. We have first an extract from a decision of the supreme court in United States v. Rice, delivered in 1819, involving the question of the payment of customs duties to British officials during the occupation of Maine in 1814. With two exceptions the remaining extracts deal with the German occupation of Belgium, and the material is drawn from German decrees, communications from the Belgian government, the reports of the Belgian committee of inquiry, the reports of the French commission on German atrocities in France, the New York *Evening Post*, and the report of the Bryce committee. These extracts present evidence of violations of international law; and yet, following the usual case method, the student would inevitably draw the conclusion that the course pursued by Germany in Belgium furnishes the latest evidence of the existing rules of international law on the subject of military occupation. There is not a word from the Hague Convention respecting the laws and customs of war on land, no reference whatever to Magoon's *Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the United States*, nor to the famous *Instructions for the Government of Armies of the United States in the Field*, prepared by Francis Lieber, and issued in 1863 as "General Orders, No. 100." In fact, the only reference to the American Civil War in this connection is a telegram from Sherman to Grant at the outset of his famous march, in which he boasted that he would "make Georgia howl." The same sort of criticism might be passed on other sections of the work.

Notwithstanding the above criticisms the volumes as a whole will be found highly interesting and valuable, and they have the advantage of bringing the discussion of cases and incidents up to the date of publication. The attempt to accomplish the latter object is probably responsible for the principal shortcomings of the work. Some of the material is not well digested, and many of the incidents and cases cited are not yet closed, so that the value of the present edition is likely to be of a temporary nature.

JOHN H. LATANÉ.

Nationalism, War and Society. A study of nationalism and its concomitant, war, in their relation to civilization; and of the fundamentals and the progress of the opposition to war. By EDWARD KREHBIEL. With an introduction by Norman Angell. (New York: The Macmillan Company, 1916. Pp. xxxv, 276.)

The filial dedication of this book by the author to the one "who taught me to hate war" furnishes the keynote to the volume. It is avowedly the pious offering of a zealous crusader. It is not a dispassionate presentation of the place of nationalism and war in modern society. "War is a horrible thing to be scorned and hated. The fundamental cause of war is nationalism. The salvation of the world is some kind of internationalism." Such, in substance, is the simple creed of the crusade against nationalism. Whatever sustains this belief is welcomed with fervor. Whatever opposes it, is presented in so unfavorable a light, as for example, through quotations from discredited extremists like Bernhardi, that it receives but a scant hearing.

It is excessively difficult to give a fair valuation of the author's views, or to criticize fairly his arguments, owing to their method of presentation. In fact, it cannot be said that there is any complete, reasoned argument, as the book is in the form of an elaborate syllabus. One meets with a continuous series of assertions, often unsupported even by references, such as, for example: "The nation represents no external or material reality which is fundamentally distinguishable from other nations" (p. 142); or, "Disarmament will not cure the military spirit, which is part of nationalism" (p. 148); or, "International law is not universal and lacks authority" (p. 173).

For the same reason it is especially difficult to appraise the author's remedy for the ills of nationalism and war. It would seem to consist in some form of internationalism, "a sort of confederation, a coöperative union of sovereign states, a true concert of powers," etc., etc. Curiously enough, the author would not apparently advocate the extirpation of nationalism. On the contrary, nations are to be the mediums, the agents of internationalism. The author arrives therefore in a logical *impasse:* he must needs use the very elements he despises. In other words he has demonstrated that nationalism in itself is not at fault: it is the perversions of nationalism that are to be attacked. The problem would hence seem reduced to that of finding the most effective means of utilizing and respecting the true worth of nationalism.

Nationalism, War and Society, then, is destructive rather than constructive in character. It is a fierce denunciation of things as they are, rather than a definite program of reconstruction, carefully thought out, and reinforced by resourceful argument. In short, this book is primarily a manual for pacifists. It is composed in part of material previously published as a syllabus by the World Peace Foundation of Boston.

The reviewer feels he ought in all candor to admit his own disability in attempting to review this volume. If the author is handicapped by his hatred of war, so also the reviewer is handicapped by his hatred of pacifism. He has learned to hate that form of pacifism which sees only the horrors of war; which cannot approve even of defensive wars, or revolts against tyranny; which is unable to regard the institution of war, under some circumstances, as a perfectly legitimate measure of self-redress. He must admit his prejudice towards pacifism that regards local patriotism as ignoble, and pleads for a broad cosmopolitanism, or brotherhood of man which does not include loyal devotion of men to their own national groups. It is possible that the author would be entirely unwilling to classify himself with such pacifists. His book, unfortunately—perhaps because of its newspaper-headline form of argument—would give such an impression, and seems to warrant the conclusion that it was meant to serve the purpose of definite propaganda, rather than a profound study of the vast field indicated by its title.

The main value of this volume would seem to lie in its extensive marshaling of authorities, and the suggestion of various lines of argument on a great number of interesting topics. It is thus of peculiar use for debates or general discussion. As a definite thesis in itself, it is valuable as a target for others to fire at—to employ a militaristic metaphor—and to train themselves for the defence of other views involving the same worthy objects, namely, the establishment of international law and order.

PHILIP MARSHALL BROWN.

Contemporary Politics in the Far East. By STANLEY K. HORNBECK, B.A. (Oxon.), PH.D. (New York: D. Appleton and Company, 1916. Pp. xiv, 466.)

This is a most welcome book, for it describes the present situation in the Far East and indicates with precision the interests of the United States, which have been somewhat obscured of late by Mexican and

European complications. Professor Hornbeck has written a narrative of events since the Chinese revolution and an appreciation of their significance, and gives the text of many documents not easily accessible. He speaks with authority, for he lived in China and Manchuria from 1909 to 1914; more than that, he is a dispassionate student whose observations are reinforced by adequate historical knowledge.

Part I is devoted to "Politics in China and Japan," beginning with a summary of the organization of China before the revolution and of the causes and course of that convulsion. Then the rivalry between Yuan Shih-kai and the radical republicans is fully and graphically described, the story being carried down to the practical restoration of monarchy late in 1915; it is unfortunate that the death of the wily president occurred too late for treatment. Other chapters set forth in detail the various constitutional projects, provincial and national, around which Chinese politics have revolved, and the history of the various parties which have gradually consolidated into two groups, radical and conservative. Professor Hornbeck does not feel much confidence in the radicals, whom he regards as either visionaries or self-seekers. An appendix provides useful biographies of the leading Chinese politicians. This section on China is the most valuable of the book.

Japan is introduced in two chapters describing her rise to world power and her constitutional system; the similarity, in spirit at least, between the German and the Japanese régimes, though not elaborated by the author, is clearly revealed. Professor Hornbeck then plunges into the vortex of Japanese politics. He shows how Ito and Katsura, the leading parliamentarians of modern Japan, were gradually driven to form party governments, and then how Count Okuma, long the champion of that principle, has, as premier, practically repudiated it under the pressure of the European war. The evolution of the progressive, constitutionalist and nationalist parties out of many smaller groups is interestingly traced, but "perhaps the most striking characteristic of Japanese party history has been the absence of concrete and detailed programmes" (p. 168). All parties have been and are opportunist, and party discipline is lax; nor has a labor party developed, although economic conditions are depressing, thanks to extraordinarily high taxes. How to reconcile lower taxes with an imperialistic program in China appears to be the problem of the moment, for the Japanese demand both with vigor.

In the second part, the international history of the Far East for the last fifty years is made to revolve around the expansion of Japan: hence

the chapter on Korea comes before that on the opening of China, and the view presented is that it was Japan, through her war with China, and not the great powers, with their policy of concessions and spheres of influence, that brought about the collapse of China. The Japanese argument that only a commercial supremacy in the Far East is aimed at, is rejected: the island power violated her pledges to respect the independence and integrity of Korea, and the control of China in Manchuria has been reduced to a nullity. Professor Hornbeck examines in detail the Japanese demands on China in the spring of 1915, considers them subversive of China's sovereignty, and, out of the mouth of Japanese statesmen, convicts the Mikado's government of double-dealing and hypocrisy. Japan's brutal treatment of China is mercilessly exposed, and her devotion to the open door frankly questioned. Without accepting all the stories of Japanese misconduct in Manchuria at their face value, it is shown that Japan has pursued with success a considered policy of ousting her commercial rivals from Manchuria, and that she proposes a similar course in China. Meanwhile, China would like nothing better than to escape from the toils tightening around her. In an interesting chapter on "Japan's Monroe Doctrine," the fallacy of such a comparison is exposed: the United States is the largest, most populous, and richest country in the new world, we have no aggressive ambitions, we ask no privileges for ourselves; whereas Japan, smaller, less populous, and less rich than China or India, demands that China grant special favors to herself and refuse them to other countries.

In the present state of the world, the United States is the only power which can aid China in her fight for national existence. Professor Hornbeck does not say that we should come to the rescue, but since we invented the doctrines of the open door and Chinese integrity, the moral obligation is clear. The other aspect of our relations with Japan, the immigration problem, is discussed in a candid spirit, emphasis being laid on what the Japanese consider our lack of politeness. What the Japanese resent is not so much the exclusion from our citizenship as the inferiority of race implied by our laws, which admit white and black, but bar yellow men. No solution of the problem is proposed or discussed beyond a recommendation to mutual understanding and (to us) a caution not to trust in assurances and commonplaces. One is inevitably reminded of the Anglo-German quarrel which was so long declared to be without reason—but which has culminated in the *ultima ratio*.

The appendix contains a number of Chinese constitutional documents and quotations from treaties consecrating the open door and the integ-

rity of China. An excellent map shows the full extent of Japanese territorial ambitions. The relation of the Philippines to the whole Far Eastern question is lightly treated; so also sundry railway schemes and other economic problems, which, however, the preface intimates, are reserved for another volume. The style is clear and straightforward without being distinguished. Occasionally there are allusions to events or institutions which require explanation; and a few journalistic expressions such as "we have" and "lines" are unwelcome to the purist; but these are insignificant criticisms of a scholarly, judicial, timely, and thoroughly interesting book.

BERNADOTTE E. SCHMITT.

England and Germany: 1740–1914. By BERNADOTTE EVERLY SCHMITT. (Princeton University Press, 1916. Pp. ix, 524.)

Professor Schmitt, who was a Rhodes scholar, frankly defends British policy, his thesis being that Germany consistently refused England's friendly advances in recent years. The chapters on "Modern England," "The German Empire," and "German Expansion" are admirable. We cannot agree, however, that the German people have scarcely any way of limiting the action of their government except by open rebellion (p. 38). The power of German public opinion to influence the government was clearly shown at the time of the *Daily Telegraph* episode in 1908.

The chapter on "Commercial Rivalry" disposes of the fallacy that England in recent years has been falling hopelessly behind. Figures taken from the *Liberal Year Book* for 1913 show that the per capita increase in value of exports during the years 1900–12 was greater in England than in Germany by fully a pound sterling.

Chapter 8, "The Quarrel," is one of the best in the volume. A mass of material is effectively cited to show how bad feeling slowly increased both in England and in Germany until within two years of the war, when a sensible improvement was noted. The chapter on "The Admiralty of the Atlantic" is likewise excellent, the best short discussion of Anglo-German naval rivalry that we have seen.

The statement made on page 169 and again on page 247 that the crises of 1905 and 1911 were "precipitated" by Germany, who was, therefore, "the aggressive power," is true but not the whole truth. The provocation was certainly great, for had not England and France, as Professor Schmitt so clearly points out (p. 235), made in 1904 a secret agreement, probably known to Germany, looking to the ultimate partition of Morocco?

Some of the later chapters, from the very nature of the subjects treated, are less trustworthy than the earlier ones. There is perhaps a bit too much of inference and mere gossip in them. We agree that the case against Germany is strong. Why, then, weaken a strong case by always refusing to give the Germans the benefit of a doubt? Several of the incidents cited (pp. 384–388) to show that "an aggressive move was definitely and carefully planned for the summer of 1914" might just as well be explained as precautionary measures.

The analysis of the diplomatic correspondence immediately preceding the war is carefully and well done, following the lines to which we have become accustomed in recent months. The author admits freely that there is much we cannot yet hope to know. From the available evidence one may infer that Germany really wished to force the war, as Professor Schmitt and many others believe, or that she wished only a diplomatic triumph and risked the peace of Europe for the sake of prestige, as Professor Ellery Stowell and others think. We cannot now be sure. In either case Germany's burden of responsibility is heavy.

The title of the book is misleading, since only fifteen pages (116–130) are devoted to the long period 1740–1871. A bibliography would have been useful. The errors in statement of fact are not important. Although the volume is perhaps more distinguished for its informing qualities than for its breadth of vision, this is probably the best book on Anglo-German relations that has appeared.

WILLIAM A. FRAYER.

French Policy and the American Alliance of 1778. By EDWARD S. CORWIN, PH.D. (Princeton University Press, 1916. Pp. 430.)

Professor Corwin has in this volume rewritten our first and most significant chapter in the history of American diplomacy. Other American historians, notably Bancroft, Channing and Van Tyne, have given us interesting accounts of America's earliest diplomatic achievements, but these accounts are brief and they are based chiefly upon sources in English. Professor Corwin has made a most thorough study based upon French as well as English sources of the circumstances of America's first and only treaty of alliance and has analyzed with excellent historical judgment the motives that prompted France in her policies of that period. The main thesis of his book, to which he brings convincing historical material, is that the principal motive of France in aiding the struggling colonies and eventually in granting recognition of their inde-

pendence was the overmastering desire of regaining French control in European diplomacy which would follow if Great Britain could be sufficiently enfeebled in power and prestige. The separation of the colonies from the British empire would, it was believed, be the greatest factor in achieving such a result. Writers have generally considered the French aid to America to have been based upon the fear of ultimate aggression by Great Britain, or by a coalition of Great Britain and the United States, upon the French possessions in the West Indies. While admitting that this was an influential cause, especially with the French king, Professor Corwin shows that it was not the main consideration in the French policy of the time which was formulated and directed by Vergennes, minister for foreign affairs. The cause which Bancroft ascribes as the dominant one for the alliance, namely, the general movement for intellectual freedom which was at this time gaining headway in France, Professor Corwin interprets as merely an instrument in the hands of the astute Vergennes for furthering his diplomatic plans for French leadership in Europe. Professor Corwin has inserted an interesting note (pp. 146–147) in which he discusses Professor Van Tyne's "coalition" argument (*American Historical Review*, April, 1916) and his own "enfeeblement" argument on the basis of the historical evidence of each.

The story of the diplomacy to enlist Spain in a common cause with France in favor of America and against Great Britain is well told although the writer regrets the lack of important Spanish source material. The failure of France to urge the American claims regarding the Newfoundland fisheries, the western lands and the free navigation of the Mississippi, when peace negotiations were being considered, is explained by the dynastic and political bonds between France and Spain which made the former place the interests of its natural and permanent ally above that of its more transient ally.

Of the many monographs upon American diplomacy written within the last few years none has been better done than this volume of Professor Corwin. It will be of inestimable service to the student of American diplomacy. The author has rendered available for the general reader much of the information and point of view contained in Doniol's monumental work, *Histoire de la Participation de la France à l'Établissement des États-Unis d'Amérique* (5 vols.). For the student not having access to this work the foot-notes containing quotations from the text of Doniol and copious extracts from the diplomatic correspondence of the foreign office are of great value. Several interesting contemporaneous documents are given in the appendix.

Professor Corwin has produced a commendable piece of work, in which scholarship is combined with clearness of expression and well balanced judgment. The reviewer has discovered few errors of statement and none of fact. The book contains an excellent index. The press work reflects credit upon the publishers.

FRANK A. UPDYKE.

America's Foreign Relations. By WILLIS FLETCHER JOHNSON. (New York: The Century Company, 1916. Two volumes: Pp. xii, 551; vii, 485.)

The plan and purpose of the author in writing these volumes is clearly and frankly set forth in the preface. "It is my purpose," he says, "to write a history of the foreign relations of the United States of America. . . . It will be a history for the reading and information of the average lay citizen. . . . It would be a grateful and beneficent achievement to inspire the American people with a more adequate and accurate conception of their real place in the world and of their true relationship with other nations. . . . If I shall succeed in doing this to a perceptible extent, the purpose of my labors in this book will be fulfilled."

The magnitude and the importance of this task both explain and justify the two substantial volumes in which the work appears. Beginning with "prenatal influences" extending back to the period of discovery, the author traces the foreign relations of this country down to the present day. The story is long and highly complicated, but by skilful arrangement and straightforward presentation it has been given unity, coherence and compelling interest. Although rarely brilliant, the style is at all times clear, while some chapters, notably those on Hawaii, Samoa, and Far Eastern relations, possess a fascination to be found only in really fine historical writing. Of the thirty-six chapters, three deal with the pre-revolutionary period, two with the Revolution, and five with events from the peace of 1783 to the treaty of Ghent; the nine following chapters take the story down to the Civil War, to which are devoted two chapters, "Neutrality," and "Intervention;" of the remaining chapters, eight are given to the period from 1864 to the war with Spain, two to that episode, and four to subsequent events. There are two appendices: one statistical, containing lists of the Presidents of the United States, the secretaries of state, American ambassadors and ministers, arranged chronologically by countries (an extremely

useful thing), and of treaties and international agreements; the other documentary, a collection of thirty treaties, notes, and memoranda. The index is adequate; the book has neither footnotes nor bibliography.

From first to last Mr. Johnson does not hesitate to interpret many of the events which he records in such a way as to drive home the thesis that if she is to be true to her destiny the United States must stand alone in her foreign relations, and, independently of any other state, formulate, enunciate, and make good her own foreign policy. In the opening chapters he shows how the fate of the colonies time and again was decided by European courts to suit the exigencies of transatlantic politics, and without regard for the interest of the colonies. The struggle first for autonomy within, then for independence of the British empire he pictures as an effort to maintain American as distinct from English economic and political rights and interests. As for the part played by France in the Revolution, not only does he see little good in the treaties of 1778, but he seems to regard that country as the arch-enemy of American unity and independence. After perusing this section of the book the reader might well feel that it was very much as a matter of course that the colonists freed themselves from England, but only through a miraculous dispensation that they were not destroyed or rendered impotent through the malignant intrigues of France. That the government of France aided the United States to serve her own ends, and that she did not desire to assist in the creation of a great world-power, no one gainsays today. On the other hand, few men of the standing of Mr. Johnson deny that the assistance of that nation was invaluable to the struggling rebels, or fail to realize that independence was finally attained as much because of the European forces against England as on account of the stubborn efforts of the Americans and the justice of their cause. One cannot help feeling that the author's conclusions in this matter have been colored by his thesis—a feeling which, fortunately, does not recur at any other point in the book—and that, on the whole, these opening chapters are the least valuable part of the work.

It is almost inevitable that a certain number of errors in the statement and the interpretation of facts should be made in the presentation of a theme so large and so complex as that of the book under review. Most of those made by the author are of minor importance in themselves, but taken together perhaps show an uneven grasp upon all parts of the subject, and at times an inadequate background of political and constitutional history. A few instances may illustrate what is meant. It is hardly accurate to state that the navigation laws were actually en-

forced from the time of Charles II down to the Revolution (I, 37); or that "the chief colonies were founded and settled almost entirely by Englishmen; with the exception of New York" (I, 59). The explanation that the "unfortunate and misleading change" from the title "department of foreign affairs" to "department of state" was made "because congress wanted this secretary to have charge of the correspondence between the President and the governors of the various States of the Union" (I, 152), is not in accordance with the facts, and ignores the existence of several important domestic functions of the department. In discussing the American occupation of the Philippines, Mr. Johnson repeats the generally accepted, and quite erroneous statement that Dewey's squadron was smaller than the Spanish fleet at Manila. He also declares that "In thus disposing of the Spanish fleet we had practically disposed of the Spanish government in the Philippines by depriving it of the only means by which it could make itself efficient. We had deprived the islands, therefore, of the only government they had, and we were in honor and humanity bound not to abandon them to chaos and anarchy, but to give them another government at least as good as that of which we had deprived them. For that reason our fleet remained at Manila, and an army was despatched thither to coöperate with it in completing the occupation of the city and the conquest and control of the islands" (II, 261). This statement is not borne out by the facts; and its official presentation as a justification for our remaining on the ground would lay this country open to the charge of insincerity, to say the least. This may have been the situation by mid-August; it was not that of early May.

Two lapses of a more serious nature might be mentioned. One is a misstatement of the terms of the unamended French treaty of November 30, 1800, and an inaccurate account of the senate amendment and the final ratification thereof. The other occurs in the discussion of the Cuban reciprocity treaty of 1903, in which the author states that the treaty was ratified by the senate, "but with some amendments and with the extraordinary provision that it should not become operative until it had been approved also by the house of representatives. This provision was adopted by the senate, not because it wanted to make the house, contrary to the Constitution, a part of the treaty-making power, but rather for the sake of delaying the matter as long as possible." (II, 277–278). In the first place, what is referred to as "the extraordinary provision that it should not become operative until it had been approved also by the house of representatives" is, in fact, a provision

that, "This convention shall not take effect until the same shall have been approved by the congress," an entirely different proposition. In the second place, such a provision was not "extraordinary," but for more than half a century had been placed in treaties materially changing the revenue laws of the country, for the purpose of protecting the house in its constitutional prerogative of initiating bills for raising revenue.

Despite these and numerous other inaccuracies, and the limitations, from the scholarly viewpoint, imposed by its "popular" character, Mr. Johnson's book is the most complete, most readable, and altogether the best account that has been given of America's foreign relations. As might be expected from his earlier work, the author is most at home, and consequently at his best, in telling of the territorial expansion of the nation. He clearly presents all of the principal phases of the larger story, however, and it may well be expected that he will have the satisfaction of accomplishing the high purpose to which he set himself.

RALSTON HAYDEN.

Caribbean Interests of the United States. By CHESTER LLOYD JONES. (New York: D. Appleton and Company, 1916. Pp. viii, 379.)

This book is the first in its field. Its object is to present briefly in popular form the salient "outlines of the important political and economic development" of the republics and colonies of the Caribbean which have a bearing upon American foreign policy and deserve greater attention. It is needed both for its illuminating information and its stimulating conclusions. Although the importance of Caribbean territories, measured both by their products and their position, has recently attracted attention to Caribbean affairs, many do not yet recognize the importance of present American political interests in the region or realize the significance of recent active negotiations for the creation of additional important protectorates there.

The volume emphasizes the recent importance of the economic factor in diplomacy. The unusually weak economic position of Caribbean countries, due to dependence of prosperity upon a few leading export products and increasing dependence on foreign food supply, has closely linked the support and success of all their industries with the economic interests of the United States, which is the chief buyer of their commodities and the chief source of capital investments.

In considering the international importance of the Caribbean, so greatly increased recently by potential trade routes resulting from the Panama Canal, the author rightly apprehends that the weaker governments, under the influence of increasing trade competition and foreign investments, may find their functions too onerous for their performance. This situation may continue to force upon the Washington government the necessity of assuming large responsibilities of financial and police supervision, and of guidance in relations with other countries. This acceptance of responsibility, which has become practically a fixed policy of the American state department, will give the United States in the Caribbean a continued position of unselfish primacy unlikely to be questioned. While this responsibility will doubtless result in additional acquisitions, American policy primarily aims to guide the weak Caribbean states which are passing into eclipse, and not to dominate them or to extinguish their nationality. In fact, the increase of American influence is the strongest guarantee of the independent nations of the region.

After his interesting treatment of American relations with the various West India Islands and with Central America, the author presents the Panama revolution and the problems of the canal, and then sketches the recent relations with Colombia and Venezuela. He states that the American government, in negotiating the Hay-Pauncefote treaty, retained freedom of action on canal tolls, especially as to coastwise trade. He apparently disapproves the "hold up" policy of Colombia; and justifies the defensive escape of Panama from the unstable and unnatural union with Colombia, and also the action of the United States in maintaining order under treaty provision. He opposes the recently proposed treaty of conciliation with Colombia, and especially Bryan's intimation that we should satisfy the demands of a weaker nation "irrespective of which party was in fault." Significant is his statement that strained political relations have not affected the natural increase of Colombian shipment to the United States. The opening of the Panama Canal, which made Panama a center of naval policy, is considered as an event of prime importance only for the United States. The policy of England, the only country likely to be in a position to dispute American control, cannot be regarded as inconsistent with American interests.

The author emphasizes the importance of the control of oil as a factor in the international policies of the Caribbean. Considering the possibilities of future trade development and European competition

in the region, the future changes in propulsion of merchant marine and navies, and the possible use of oil as a political factor in the development of the region which is necessarily the most important sphere of influence of the United States, he urges that the Washington government must have a live interest in the control of the oil supplies and oil development which lie near the crossings of the world's great trade routes. With good reason he forecasts that the United States may be forced to place a new interpretation on the Monroe Doctrine to prevent foreign control of such resources, which, by shifting military power in the Caribbean, would make more difficult the defense of the established American policy. He further urges the need of a policy of frank avowal of the principles of the Lodge resolution concerning Magdalena Bay.

Mr. Jones does not regard the Monroe Doctrine as an obsolete shibboleth. He sees in the practice of the United States no indication of any intention to abandon the general principle against intervention by non-American states, but rather to extend it. He also recognizes that the Monroe Doctrine has a decided economic phase because it must estimate the economic factors which may possibly influence the development of a country. The conditions of commercial development, as well as the logic of events, will necessitate an increasing supervision of unstable government, in accord with the doctrine or policy practically begun by the Platt amendment. Whether we wish it or not, we must engage in "dollar diplomacy" in the region around the Caribbean. Any economic development by European hands in Latin America which might have "political results affecting unfavorably the independence of the American republics" must be regarded as unfriendly.

Moreover, he advocates the adoption of national programs and diplomatic agreements which may involve intervention to keep order, and other possibilities of entanglements—such, in fact, as have already arisen in our international relations. A positive policy, preventive rather than remedial, is already supplanting the former negative or passive policy which involved intervention only after a wrong was done.

The author is convinced that the United States as a dominant power should control policy in America, and especially in the region north of the Orinoco, in which she will inevitably hold a position of primacy. Except possibly in some larger general policies, he does not approve the proposed modification of the Monroe Doctrine by plans for the general coöperation of the stronger independent American states in the settlement of American affairs. It would be difficult to find a basis for such

coöperation. There are really two groups of interests. The United States should retain freedom of action in Caribbean problems which are primarily her problems, and in which the South American nations are only distantly concerned.

Although the discussion covering so wide a field is not exhaustive, it ought to serve a valuable purpose in awakening and directing American attention to the importance of foreign relations—and especially relations with Caribbean neighbors which through the primacy and dominance of the United States in both their export and import trade are already feeling the steady increase of American influence.

The book is both authoritative and readable. It is well supplied with footnote references and also has an appended bibliography of recent discussions relating to the Caribbean. It also has a good index. While practically free from inaccuracies, there are occasional statements which may appear extravagant. The assertion that the Clayton Bulwer convention was "received with little criticism in the United States until after the Civil War" needs considerable modification (p. 219). Professor Jones has a good grasp of his subject, and a perspective which enables him to view the problems of future policy without provincial or partisan prejudices.

JAMES MORTON CALLAHAN.

Principles of Constitutional Government. By FRANK J. GOODNOW. (New York: Harper and Brothers, 1916. Pp. 396.)

The technique of actual government, by contrast with its underlying principles, has been satisfactorily set forth, so far as is necessary to meet the needs of college classes and of the general reader, in a number of volumes that have appeared in recent years. But while the processes of legislation have thus been made clear both for the United States and for the chief European countries, there still has been room for a more comprehensive survey of the field of constitutional government as a whole, and it is this need which the volume under review supplies. The peculiar circumstances of its composition must account for the mould in which the author's thought is cast and for the wide horizon brought within the range of his comment. While legal adviser to the Chinese government he delivered during the year 1913–14 a series of lectures before the Peking University in which he undertook to set forth the nature of constitutional government to a people wholly unacquainted with its practical aspects and only in part familiar with its

theory. These lectures are collected in the present volume and they represent an endeavor to distinguish the essential elements of constitutional government from the peculiar local conditions under which it has been created and developed in the more important states subject to it.

The necessity of going back at almost every turn to first principles has resulted in a volume which in respect to its historical basis contains much that might otherwise have been assumed as part of general knowledge, but one which at the same time contains what is far more valuable than a mere statement of facts, namely, a study by comparison and contrast of the spirit of constitutional government and of the manifold forms it has taken to harmonize with the traditions and political instincts of each nation. The United States and Germany are both federations created by a constitution, but federations radically distinct in many important elements. The United States and Great Britain are radically unlike in governmental form, yet a similar democratic spirit underlies their political activities. Moreover, while in respect to the organization and distribution of governmental powers modern constitutional governments may vary greatly, their variations are greater still in respect to the second essential element of a constitution, namely, the legal definition of the relation of the individual to the state and the consequent rights which the individual may have as against the state. Here the constitutional government of the United States stands almost unique in the world in so far as it makes it possible for a law to be declared unconstitutional by the courts when shown to have invaded private rights secured by the Constitution, while on the other hand the British constitution, although denying such power to the courts, practically insures by the force of tradition similar if not greater rights to the individual. These points are admirably discussed by President Goodnow, and the very simplicity and clarity with which he presents the issues are a tribute to his thorough mastery of them.

It is in throwing light upon the true meaning of constitutional government that the present volume will therefore be of value, even though by its form it is less adapted to use as a textbook than as collateral reading in college courses. As the second volume in the Harper's Citizens' Series it is a worthy successor to *Principles of Labor Legislation*, and both together lead us to expect much of the volumes yet to appear.

C. G. Fenwick.

Form and Functions of American Government. By THOMAS HARRISON REED. (Yonkers-on-Hudson: World Book Company, 1916. Pp. xv, 549.)

Professor Reed states that this book "is intended primarily for that great majority of high school pupils who go no farther on the road of formal education, and aims to deal with the principles of government organization and activity in such a way as to be a suitable basis for the most thorough high school course in preparation for citizenship."

The book consists of an introduction and 41 chapters. The introduction gives a concise and interesting statement of the causes which have carried society from the *laissez faire* theory and practice of government to a more rational and beneficent paternalistic practice. The chapters are grouped into six parts: viz., I, the background of American government, II, parties and elections, III, state government, IV, local government, V, government of the United States, and VI, the functions of government.

The subject is treated from an historical point of view, but in the main each topic is brought up to date and the views are progressive throughout. For instance, Professor Reed construes the Constitution quite liberally. Referring to the "necessary and proper" clause, he says, "To all intents and purposes [the theory of implied powers] amounts to this: Change the 'and' in 'necessary and proper' to 'or' so that the Constitution reads 'necessary or proper.' Under this clause thus interpreted, congress has been exercising wider and wider powers" (p. 47). Again, "What is now regarded as consistent with strict construction, such as a Mississippi valley waterway, would have required too much loosening of the Constitution for even the stoutest Federalist of a century ago" (p. 74). Speaking of municipal ownership, the author says, "The line [of public utility ownership] has been drawn at the point where the possibility of profit to some individual appears. European cities have not drawn any such line, and they look with contempt on the financial policy which gives the city all the burdensome tasks and denies it all the income-producing enterprises" (p. 427).

Several errors—of fact rather than interpretation—may be noted. Mr. Reed says, "The judiciary act . . . . provided that a case involving the Constitution or laws of the United States might be appealed from the decision of the highest state court to the supreme court of the United States, if the decision of the state court had been against the applicability of the Constitution or law of the United

States" (p. 46). By an act of congress approved December 23, 1914, an appeal is permitted even if the decision of the state court is not against the applicability of the Constitution or law of the United States. In listing the equal suffrage States (p. 102, note) two States have been omitted, Kansas and Oregon, both of which adopted woman suffrage in 1912. And in listing the prohibition States (p. 341, note) two are omitted, Idaho and Iowa, whose state-wide prohibition laws became effective January 1, 1916. Mr. Reed also asserts that all States other than those having state-wide prohibition have some form of local option (p. 341). This is not true of Nevada, New Jersey, or Pennsylvania, except that in the latter State judges grant liquor licenses and the election of a judge commonly resolves itself into a "wet" and "dry" election. In New York local option does not yet apply to cities. Again, in discussing state representation at national political party conventions (p. 229), he says that each State has twice as many delegates as it has senators and representatives in congress. This was not true of the 1916 Republican convention, which reduced the representation of certain States, such as those of the Solid South.

There are several unimportant errors which have probably resulted from the use of old statistics. For instance, the author says that state senators serve terms of four years in twenty-five States (p. 122). They are now elected for such terms in thirty-one States. And in a list of States which do not have county superintendents of schools Ohio is included and Vermont and Connecticut are omitted (p. 361); whereas, Ohio does have county superintendents of schools, and Vermont and Connecticut do not have such officers.

This book was in press during a period of unprecedented federal legislation, so various facts concerning the Philippine government, preparedness, military and naval academies, and the income tax are already out of date. Also, the shipping board, the farm loan board, the tariff commission, prohibition of child labor, and the inheritance tax have come into existence since the book went to press.

From a pedagogical standpoint the subject matter of this text is well arranged, except that Part II and Part V could well be interchanged so that the treatment of the "Government of the United States," which has enumerated powers, might precede that of the States, which have the residual powers; and so that the purposes of government—the end—might precede "Parties and Elections"—the means. There is an excellent bibliography at the end of each chapter, though almost too extensive for a high school teacher with limited time for

preparation. Topics for discussion are listed, but there are no questions to aid the student in the preparation of the assignments.

FRANK ABBOTT MAGRUDER.

The Nullification Controversy in South Carolina. By CHAUNCEY SAMUEL BOUCHER. (The University of Chicago Press, 1916. Pp. xii, 399.)

Although the nullification movement in South Carolina was a very important episode in our political history, its possibilities as a subject of investigation are obviously somewhat limited. We might ask, therefore, whether, in view of Mr. David Houston's excellent *Critical Study of Nullification in South Carolina* [New York, 1896], there is room for another work in such a narrow field. This question may be answered in the affirmative. Dr. Boucher's work does not in any way conflict with Mr. Houston's and there is practically no duplication of material. Mr. Houston considers his subject in its broad legal phase, he treats it in connection with the history of constitutional theory, and he emphasizes the parts played by Calhoun, Clay, Jackson, and other leaders of national importance. Dr. Boucher's treatment, on the other hand, is historical rather than legal, it is narrative rather than theoretical, and it emphasizes the local party aspect of the struggle. There are also other differences. Of the 8 chapters in Mr. Houston's book, 4 are devoted to an introduction and one to a discussion of the connection between nullification and secession, leaving only 3 chapters for the main subject. Dr. Boucher dispenses with an introduction, but he covers in great detail the period from 1828 to 1833 and concludes with a chapter on the test oath controversy, which was the local aftermath of the main struggle. Mr. Houston's point of view is strongly nationalistic. Dr. Boucher is less partisan. Apparently he accepts the theory of state sovereignty, but does not believe that it affords a logical basis for nullification.

It is impossible, within the limits of this review, to do full justice to Dr. Boucher's work. In addition to the ordinary printed sources, he has made profitable use of contemporary newspapers and pamphlets and also of some most interesting manuscript material, especially the William J. Grayson memoirs in Columbia, the James H. Hammond papers in Washington and the Joel R. Poinsett papers in Philadelphia. He has prepared eleven maps to illustrate the geographical distribution and the relative strength of the Unionists and Nullifiers at different

stages in the movement. New light is thrown upon the mediation of Virginia, the militia dispute, the activities of Poinsett, and many other questions. It is interesting to note that the Unionists were in some respects more radical than the Nullifiers. Langdon Cheves, William Drayton, General James Blair, and other leaders frequently spoke of secession as a possible remedy against tariff oppression, and the chief plank in their party platform was a demand for a southern convention to take united action. The most original feature of the book is the treatment of the test oath controversy. By an amendment to the state constitution, adopted in 1834, all officials in the State were required to take an oath of allegiance to South Carolina in a form which Unionists believed to be in conflict with their federal obligations. The difficulty was finally compromised by the passage of a legislative resolution which stated that "the allegiance required by the amendment is that allegiance which every citizen owes to the State consistently with the Constitution of the United States."

There is very little to be said in the way of criticism. It would, perhaps, have rounded out the subject matter, if more attention had been paid to the settlement of the southwest as a factor in the economic depression of South Carolina. A mere summary based on the material in Professor Turner's *Rise of the New West*, would have been sufficient. More emphasis should also be placed upon the influence of Dr. Thomas Cooper, president of South Carolina College, whose writings were the greatest single force in popularising English free trade doctrines in America. The Poinsett papers belong not to the "Pennsylvania Library Society" (p. 367), but to the Historical Society of Pennsylvania.

W. Roy Smith.

Life of Henry Winter Davis. By Bernard C. Steiner. (Baltimore: John Murphy Company, 1916. Pp. 416.)

Henry Winter Davis (1817–1865) is the last of the great congressional leaders of the Civil War period to find a biographer. Fate has been unkind to him. His reputation as a statesman has suffered because his controversy with President Lincoln and his share in originating the congressional plan of reconstruction have been allowed to overshadow other and more important aspects of his career. Through his influence and that of Reverdy Johnson, whose life Dr. Steiner has also written, Maryland was kept in the Union in 1861 until the military forces of the United States were strong enough to control the situation.

He was also the undisputed leader of the movement which resulted in the Maryland emancipation act of 1863.

Dr. Steiner's book is extremely sympathetic. In fact, if there is any fault to be found at all, it would be that it is too sympathetic, or, in other words, that it is not sufficiently critical. Davis was undoubtedly a man "of a dauntless courage, of a lofty eloquence," and "of a changeless love of his country" (p. 393), but he was also impetuous, hot-tempered, and tactless. He was a jingo in his attitude toward foreign powers and he displayed a quite unnecessary amount of rancor in his criticism of slavery and the people of the South. The old Whig theory of legislative predominance over the executive, which was the key-note of his political philosophy, is impractical even in time of peace and it is absolutely unworkable in time of war. It is interesting to note that Davis's resolution challenging France to war on account of her interference in Mexico, which was passed by the house of representatives on April 4, 1864, was characterized by Seward, in his explanation to Napoleon III, as an attempt of the legislative to encroach upon the executive field of action. This Whig theory of government explains in part the bitterness of Davis's attacks upon Lincoln, although his disappointment in not getting a cabinet position was probably also an important factor.

These criticisms are obviously directed more against the subject of this biography than against its author. When we consider, however, that the unfavorable aspects of Davis's career have been fully represented by Nicholay and Hay, Gideon Welles, and others, we ought perhaps, after all, to be grateful for this excellent plea for the defense. The first three chapters, which are autobiographical, give an interesting picture of Davis's boyhood and his life as a student at Kenyon College and at the University of Virginia. Dr. Steiner himself covers the period from 1840 to 1865, treating in detail the various stages in his hero's political career, as a Whig, a Know Nothing, a Constitutional Unionist, and a Republican. New light is thrown upon a number of questions, especially upon the so-called Wade-Davis bill and the Wade-Davis manifesto, both of which, as Dr. Steiner shows, were primarily the work of Davis and should more properly be described by the term Davis-Wade. As a matter of fact, the part played by Davis in the history of his time has never before received adequate treatment. All students of the Civil War and Reconstruction will welcome this scholarly addition to the growing literature of that period.

W. Roy Smith

NEWS AND NOTES

EDITED BY CHARLES G. FENWICK
Bryn Mawr College

PERSONAL AND GENERAL

Prof. Edward Elliott, formerly dean and professor of international law at Princeton, has been added to the department of political science at the University of California as professor of international law and politics, effective January 1, 1917.

For the term January to May Dr. Ludwig Ehrlich, of Exeter College, Oxford, a student and colleague of Professor Vinogradoff, is to be in the department of political science of the University of California as a lecturer. He will give an undergraduate course on the principles of public law of modern European states, and a graduate seminar in public law.

Prof. Thomas S. Reed of the department of political science of the University of California, is on leave for a year and engaged as city manager of San José, California, under a charter which he himself drafted for the city. San José is the first city of importance in the State to adopt the city manager plan.

A department of political science has been organized at the University of Southern California, under the direction of Dr. Roy Malcolm. Among other courses that are being offered are elementary law, international law, political institutions of Japan, American government, and municipal problems.

Prof. James F. Colby, professor of law and political science at Dartmouth College, has resigned, and James P. Richardson, Dartmouth, 1899, Boston University Law, 1902, who has been practising law in Boston for the past fourteen years, has been elected as his successor.

Dr. Eldon C. Evans of the University of Chicago has been appointed instructor in political science at Dartmouth College.

Prof. W. F. Dodd of the University of Chicago will be in charge of the state legislative reference bureau at Springfield, Illinois, during the session of the general assembly.

Mr. B. K. Sarkar of Calcutta, India, delivered a number of addresses and lectures at the State University of Iowa during the month of December, 1916, on such subjects as "The Political Philosophy of the Hindus," "Modern Egypt," "Japan as it is," and "The Oriental Viewpoint."

Prof. Alejandro Alvarez of the University of Chile will deliver a series of lectures in the universities of the middle west under the auspices of the Carnegie Foundation during the spring semester.

The Association of Urban Universities held its third annual meeting in New York on November 15–17. The object of the association is to study the educational needs of large cities and to devise methods of meeting those needs. The principal topic of discussion this year was the report of the field work committee. This committee, appointed last year, made an exhaustive study of field work or the instruction of students through actual participation in regular tasks. The report as submitted showed clearly that field work has not yet been standardized in aims, pedagogical methods and details of administration. But it did indicate that there is a rapid increase in the use of field work by educational institutions as a means of instruction. This is especially true in large cities where the many industries of the city and the governmental bureaus are laboratories for students in the social and exact sciences. The committee is to continue its work during the coming year and to render a further report.

Another topic of interest was the training of employees in the civil service of the city. The work of New York City and the College of the City of New York were considered in some detail. There are nearly 100,000 persons employed in the New York City public service. Since persons are recruited for the higher grades from the lower, the city or its college should do something to educate the advancing public servant if men of high calibre and training are to be secured for important places. The College of the City of New York courses given in the municipal building and in the college itself have approximately 1,000 city employees as students. The courses are designed to improve the efficiency of persons in services from the lowest to the highest in the clerical, accounting and engineering divisions.

Western Reserve University has just inaugurated courses similar in aim but more general in content. It is probable that colleges in large cities throughout the country will give some attention to the training not only of persons who expect to enter public service, but also to those who are already in that service and who look forward to advancement.[1]

The Third National Conference on Universities and Public Service was held at the University of Pennsylvania, November 15 and 16, 1916, under the auspices of the Society for the Promotion of Training for Public Service. Mr. Edward A. Fitzpatrick, director of the Society for the Promotion of Training for Public Service, proposed that there should be a new national civil service law. He pointed out the failure of the present law to provide a competitive promotional plan, the lack of any adequate classification or standardization of public employment, and the failure to take advantage of the studies of private employment that have been made during the last ten years. But the essential fault was the commission's lack of independence and its subservient character to the president. Mr. Frederick P. Gruenberg of the Philadelphia Bureau of Municipal Research read a paper on "Why Men Leave the Public Service." He pointed out the conditions of tenure, promotion, salary and social esteem which enter into the severance of public servants from the service, together with the economic pressure from private corporations.

The subject of the relation of the high school to the movement for training for public service was discussed by Mr. W. D. Lewis, principal of the William Penn High School of Philadelphia, Mr. Benjamin C. Gruenberg of the Julia Richman High School of New York City and Mr. Edward M. Bainter, principal of the Kansas City Polytechnic Institute. President Clyde A. Duniway, of the University of Wyoming, answered the question, "Is specific training for public service a university function?" with an unqualified "Yes." Dr. William H. Allen of the Institute for Public Service of New York City answered the question, "Is field work the proper method of training for public service?" pointing out that field work must supplement class instruction. Prof. Charles A. Beard of the New York Training School for Public Service prepared for the conference an illuminating paper on "What form of university organization is best adapted to develop and to administer training for public service?" President Parke R. Kolbe of the University of Akron presented a paper on "Training Men in

[1] Contributed by Frederick B. Robinson.

the Public Service from the Viewpoint of University Coöperation." At one meeting the subject discussed was: "In what ways may or should professional training be modified to prepare men better for public service and to reinforce or develop efficient public administration?" President A. Monroe Stowe of the University of Toledo referred to the experience gained in the training of teachers. John Collier of the New York Training School for Community Center Workers showed how social workers are missing many of the opportunities that are facing them through lack of coördinated effort, of a proper conception of social work and of training for social work. At this meeting legal education also came in for constructive criticism by Mr. Louis Brandeis Wehle of the board of trustees of the Society for the Promotion of Training for Public Service. The conference closed with an address by Dr. Charles McCarthy of the Wisconsin Legislative Reference Library on "The New Education and the New Public Service." He pointed out the deficiencies of present efforts by colleges to train men for public service in class rooms, and the suspicious attitude of the public toward the present product of the universities, and showed the change that is just beginning in the colleges in the acceptance of a wider social viewpoint and practical methods of training supplementing class room instruction. Among those who took prominent part in the discussions were President Campbell of the University of Oregon, President McVey of the University of North Dakota, Professor Kemmerer of Princeton University and Dean Holdsworth of the University of Pittsburgh.[2]

The Macmillan Company published in January a volume on *The Economic Development of Modern Europe* by Prof. F. A. Ogg of the University of Wisconsin.

Among the Harper spring announcements is a volume on *National Progress 1907–17* by Prof. F. A. Ogg of the University of Wisconsin. This is volume 28 in the American Nation series edited by Prof. Albert Bushnell Hart.

The State Historical Society of Iowa has issued a volume of 740 pages on *Statute Law-making in Iowa.* The book includes the following monographs: Editor's Introduction, by Dr. Benj. F. Shambaugh; History and Organization of the Legislature in Iowa, by Dr. John E. Briggs; Law-making Powers of the Legislature in Iowa, by Dr. Benj.

[2] Contributed by Edward A. Fitzpatrick.

F. Shambaugh; Form and Language of Statutes in Iowa, by Mr. Jacob Van der Zee; Codification of Statute Law in Iowa, by Dr. Dan E. Clark; Interpretation and Construction of Statutes, by Dr. O. K. Patton; The Drafting of Statutes, by Mr. Jacob Van der Zee; The Committee System, by Dr. F. E. Horack; and Some Abuses Connected with Statute Law-making, by Dr. I. L. Pollock.

The translation by Felix E. Held of Johann Andreae's *Christianopolis* (New York, Oxford University Press, 1916, pp. 287) will introduce to the public one of the less well known utopias of the period following Sir Thomas More's portrayal of the ideal state. Critics have disputed over the extent to which Andreae drew his ideas from his more famous predecessors, and Mr. Held in an introduction to the translation undertakes to prove that Andreae's work is an independent and original production, and also that it is very probable that the *New Atlantis* of Bacon and the *Nova Solyma* of Samuel Gott were composed under the influence of *Christianopolis*.

Our America, the Elements of Civics, by John A. Lapp (Indianapolis, Bobbs-Merrill Company, 1916, pp. 399), is an attempt to provide an elementary text in civics which shall lay stress rather upon the functions of government than upon its forms, with the object of presenting government as the practical means of handling common affairs, as the instrument organized to meet the needs of the people. The arrangement of chapters is made therefore according to the functions performed rather than the organs by which they are performed, though an endeavor is made to point out whether the work in question is one to be done by federal, state, or local government. The successive chapters are followed by questions for investigation and for debate, with references where further information may be obtained.

Magna Charta and Other Addresses, by William D. Guthrie (Columbia University Press, 1916, pp. 282), brings together in permanent form a number of addresses delivered by a prominent member of the New York bar and professor of constitutional law at Columbia University. The attitude of the author in respect to constitutional questions and matters of social legislation is conservative: he defends the judiciary against the attacks made upon it for the alleged abuse of its power to declare laws unconstitutional, he is skeptical of the value of workmen's compensation laws in so far as they impose liability without fault, he is

opposed to graduated or progressive taxation as against proportional taxation, and he regards the initiative and referendum as a menace to our republican form of government; but underlying his position on these and other questions there is a very virile patriotism and a clear and strong sense of the responsibilities of a democracy and of the need of individual and collective self-restraint as the basis of true freedom. In this latter respect the volume may be read together with David Jayne Hill's *Americanism, What It Is,* noticed in an earlier number.

American Patriots and Statesmen is the title of a series of five small volumes edited by Prof. A. B. Hart and forming one installment of the *Collier Classics* under the general editorship of Prof. W. A. Neilson (New York, P. F. Collier and Son, 1916, each volume pp. 383). The purpose of the *Collier Classics* is to supplement the earlier *Harvard Classics* by devoting separate sets of volumes to the history of thought in more modern times. One phase of this history is the part which has been played by forms of government and varieties of political liberty in the conflict of national ideals which is going on at present and the issues of which are still in the balance. The present group of volumes is an endeavor to present the foundations upon which the United States have been built, the moral, social and political ideals which animated the founders of the republic and inspired them during the first century of its existence. The part of the editor has been to select out of the multitude of possible documents those which by their power of literary expression and their embodiment of hopes and aspirations for the welfare of the country are best illustrative of the American ideal. Writers of every class and from every section of the country have been included; but because of the political and social controversies with which, the editor says, so many later patriotic utterances are bound up, the selections are brought to a close with the year 1861. While the selections are for the most part statements of ideals, some few sound a note of warning and expostulation.

Trust Laws and Unfair Competition, published by the Bureau of Corporations of the Department of Commerce (Washington, Government Printing Office, 1916, pp. liv, 832), will prove an exceptionally valuable handbook to the law of the subject it covers. It has been compiled under the direction of Joseph E. Davies, commissioner of corporations, and covers the field of domestic as well as of foreign law. In the treatment of both antitrust laws and laws against unfair compe-

tition in the United States the distinction is made between the earlier common law and the later statute law, as also between federal laws and state laws. The review of federal decisions under the Sherman act is particularly comprehensive, while the review of state antitrust laws will be helpful to those who desire a general view of an otherwise inaccessible body of material. The discussion of unfair competition under the common law will also prove of great service as a summary of a complex branch of the law.

Principles of Commerce by Harry Gunnison Brown (New York, The Macmillan Company, 1916, pp. xxiii, 207), although primarily an economic study, includes a discussion of a number of problems which are the object of federal legislation. The economic value of protective tariffs, bounties, navigation acts, canal building at public expense, land grants to railways, transportation monopolies, and rate discriminations are clearly discussed and their elucidation must pave the way for intelligent consideration by the educated public of the expediency of legislation in those fields.

The economic basis of several laws of the sixty-third and sixty-fourth congresses is presented in Harold G. Moulton's *Principles of Money and Banking* (University of Chicago Press, 1916, pp. xl, 778). Part I includes the history and regulation of government paper currency, the silver movement and the control of price levels. Part II discusses *inter alia* the governmental supervision of banking, the federal reserve system, agricultural credit, and the prohibition of interlocking directorates by the Clayton act. The volume is not a text, but a series of selections presenting varying points of view. *Readings in Money and Banking* by Chester A. Phillips (New York, the Macmillan Company, 1916, pp. 845) also contains chapters dealing with the topics above mentioned, and in addition discusses foreign banking systems and the European war in relation to money, banking and finance.

Property and Society, by Andrew A. Bruce (1916, pp. 150), is a discussion by an associate justice of the supreme court of North Dakota of the traditional right to private property when brought into contact with the efforts of modern organized society to adjust the old law with the newer social concept of property. Chapter III on the "Necessity of Extended Private Ownership to National Greatness" is a strong statement of the case against a socialistic plan of state ownership of

land; yet the author is ready to restrict individual rights when in conflict with the needs of society, for the very reason that such legislative interference is necesssary if individualism is to survive. The chapter entitled "Public Opinion vs. Legislation" is a stirring appeal for a higher sense of personal honor throughout the body politic as the basis of effective legislation. "What we really need, in this later day of democracy, are not more laws, or more political machinery, but a social conscience."

Ida M. Tarbell's *New Ideals in Business* (New York, The Macmillan Company, 1916, pp. 339) is more than "an account of their practice and their effects upon men and profits" as the subtitle describes it. To the political scientist it will serve as an object lesson of the limitations of legislation for the cure of industrial evils or as a dividing line between the field in which legislation can effectively work and the wider field in which coöperation between employer and employees is alone competent to secure industrial peace and eradicate industrial ills. Successive chapters treat of the new régime in factories, safety of workers, health, "sober first," housing, hours of work, wages, profit-sharing, "steadying the job," and the factory as a school.

Standards of Health Insurance, by I. M. Rubinow (New York, H. Holt and Company, 1916, pp. 322), is a popular presentation of the subject of health insurance and a discussion of the problems involved in preparing a model health-insurance law. The author discusses in turn the benefits which must be given, the proper way of apportioning the cost, the organization of health-insurance associations, medical aid, the necessity for compulsion, and other details. An appendix is contributed by Prof. J. P. Chamberlain dealing with the question of the constitutionality of health insurance. The volume must prove of value to all persons who are dealing with the subject either theoretically or practically.

"Legislation and Law Enforcement" is an illuminating chapter in Maude E. Miner's *Slavery of Prostitution, a Plea for Emancipation* (New York, The Macmillan Company, 1916, pp. 308). The author, whose experience as a probation officer entitles her to speak, discusses the character of state laws and their effectiveness, the administration of police ordinances in cities, difficulties in the enforcement of the law, the courts, and public opinion. In subsequent chapters she comments

upon municipal houses of detention, probation work reformatories and farm colonies, and other means of correction and prevention. The tone of the volume is earnest and entirely devoid of sensationalism.

The Panama Canal and Commerce, by Emory R. Johnson (New York, D. Appleton and Company, 1916, pp. 296), is a valuable source of information on the subject from the pen of one who as special commissioner of the United States on Panama traffic and tolls can speak with authority. The author discusses the commercial history of the canal, the schedule of tonnage and tolls in force at the isthmus, the types of ships which will be used in canal commerce, the canal and the American marine, the canal and alternative routes, and other questions of interest not only to merchants and shippers but to those concerned with the policy of the United States in the administration of the canal. For economic reasons, if for no other, the author opposes the exemption of American coastwise shipping from the payment of tolls.

The Canadian Annual Review of Public Affairs, 1915, by J. Castell Hopkins (Toronto, The Annual Review Publishing Company, 1916, pp. 880), contains, as in the case of previous numbers, a vast body of material relating to public affairs in Canada which is accessible in no other form. The editor fairly claims that much of the historical and general information collated would be lost without such a record. The war fills a large space in the volume owing to the editor's belief that it will have a more vital influence upon the future of Canada than now appears on the surface. After the chapters discussing the "British Empire in the War" and "Canada and the War in 1915" the affairs of the several provinces are taken up in turn, followed by a discussion of transportation in Canada and Dominion political affairs.

INTERNATIONAL AFFAIRS

Protest against the Deportation of Belgian Civilians. On November 29 the American chargé at Berlin, under orders from his government, presented a note to the German chancellor in which the imperial government was informed that the United States found itself constrained to protest most solemnly against the deportation of Belgian civilians as an action, "in contravention of all precedents and of those humane principles of international practice which have long been accepted and followed by civilized nations in their treatment of non-combatants." While the note was framed in the language of diplomatic courtesy it is

significant in that it is a protest against an act in which the material interests of the United States are in no way involved, and it therefore constitutes a first step towards intervention on moral grounds. If it may seem regrettable that the diplomatic activities of a state are almost entirely limited to defending the direct material interests of the country, it must be remembered that moral issues are rarely presented in clear and definite form and that the presumption is always in favor of honorable conduct on the part of a civilized nation, so that intervention on moral grounds has in the past generally been confined to dealings with semi-civilized countries where violations of the principles of humane conduct have been incontrovertible. Even in the negotiations over the *Lusitania* case and subsequent cases of similar nature there has been the suggestion that the United States has taken action only because of the fact that American lives were involved, and not because of the character of such warfare in the abstract.

In the present instance the violation by Germany of the provisions of the Hague convention relating to the laws and customs of war on land is so clear and direct that there is no room for a charitable interpretation in favor of Germany. In replying to the American protest the German government, in a general statement to the world at large and in an individual note addressed to the United States, defends the deportations partly on humanitarian grounds and partly on the ground of necessity. It is contended that it is an act of charity and mercy not to allow Belgian workmen to remain idle and thus become depraved but this defense being so obviously open to the charge of hypocrisy the law of necessity is next pleaded. Article 43 of the Hague convention relating to the laws and customs of war on land authorizes the occupant of conquered territory to "take all steps in his power to insure, as far as possible, public order and safety." But even if this rule stood alone it would strain reason to the breaking point to believe that it justified acts so remotely connected with public order as deportations of persons against whom no offense has been proved, particularly when it is clear that the persons deported are to work in German factories and thus release so many Germans for military service. Article 43 is, however, followed by Article 52 in which it is provided that "neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation;" while Article 44, which forbids "any compulsion on the population of occupied territory to take part in military operations against its own country," clearly extends to the cases where Belgians have been put

digging trenches for the enemy. If the law of military necessity is to reign supreme, then the careful codification of detailed rules at the Hague conference was little better than a farce. It is interesting to note that President Wilson, seeing the futility of his protest, has made it known that he will await the voice of the country before taking further action. While this step is criticized by many who are burning for immediate action, it is in fact an attempt to democratize the foreign policy of the United States.

The Case of Count Tarnowski. On December 15 it was announced by the British foreign office to the American ambassador, Walter H. Page, that the Entente powers had decided to grant a safe-conduct to Count Tarnowski von Tarnow, the recently appointed Austro-Hungarian ambassador to the United States. The first request for a safe passage, made by Austria-Hungary and transmitted by the American ambassador, was refused on November 28 on the ground that even if international law forbade the refusal of a safe-conduct, which was not conceded, the British government would be justified in doing so in the particular instance in view of the irregular conduct of Dr. Dumba and Captains von Papen and Boy-ed. On November 29 a second note was sent by the United States to Great Britain and France requesting a reconsideration of their refusal to issue the safe-conduct. According to press reports the second note urged that it was the inalienable right of sovereign nations to exchange ambassadors, and that a belligerent was not justified in denying this right; it was, therefore, not as a matter of courtesy but of international right that the United States renewed the request. In passing upon the validity of this claim of the United States there are several conflicting points to be considered. It is argued by some that the case is one in which the ambassador of a belligerent seeks passage through the enemy lines on his way to a neutral, and that the traditional rule in such cases is that the third party is under no obligation to grant the favor. The latter statement is undoubtedly true, for apart from instances such as that of Maréchal de Belle-Isle, who was arrested when passing through Hanover in 1744 on his way from France to Berlin, the opinion of publicists from Vattel to Bonfils is clearly in favor of the right of a belligerent to deprive the enemy of the advantage of receiving an ambassador, especially where it is thought that the object of his mission may be hurtful to the state through which the ambassador seeks passage. On the other hand it is argued that the case properly falls

within the precedent of the *Trent*, in which the United States released two envoys of the Confederate States who, when aboard a British vessel sailing from one neutral part to another, had been seized by a United States cruiser and conveyed to this country; so that if Count Tarnowski were to take passage on a Dutch vessel sailing from Rotterdam to New York he would be equally protected from capture. In respect to this contention it must be observed that while Great Britain demanded the release of Mason and Slidell on the ground that since their destination was to a neutral port they could not in any sense be classed as contraband, Secretary Seward maintained the contrary, but released them on the technical ground that the act of the captain of the United States cruiser was irregular in removing the two envoys instead of bringing the vessel into port and permitting a prize court to pass upon the question. The precedent of the *Trent* is therefore of value to neither side, since both Great Britain and the United States are making claims contrary to those they made in that case. Were the provisions of the Declaration of London in force, article 47, which limits unneutral service to the carrying of individuals "in the armed force of the enemy," might operate to exclude ambassadors. It would seem that the solution may perhaps be found to rest upon the legality of the present extension of the British blockade to include the coast of Holland, in so far as is involved the ulterior destination of persons and goods to the Central Powers. If this blackade be regarded as legitimate then it may be said that Great Britain might properly refuse the passage of Count Tarnowski through the enemy lines. If this blackade be regarded as unlawful then there remains the ill-defined precedent of the *Trent*. It may be added, however, that the very fact that Great Britain yielded to the request of the United States is an indication of her recognition that where the danger to the belligerent is not great the needs of the neutral should be given precedence.

Peace Proposals. The peace proposals of Germany came with dramatic suddenness after the sweeping victory of its armies in Roumania. On December 12, Chancellor von Bethmann-Hollweg announced in the Reichstag that notes proposing negotiations for peace had been dispatched to all the hostile powers through the neutral nations representing them diplomatically. For a brief interval there was question whether President Wilson would forward the notes with comment and recommendations on his part, his decision begin against such comment.

Then followed the even more dramatic note addressed by President Wilson to all the belligerents under date of December 18 calling upon them for a definite statement of the aims for which they were fighting. Although the President disclaimed any intention of mediating and insisted that his note had no connection with the overtures of the Central powers, the circumstances of the case rendered any such contention futile. That the President was legally justified in mediating cannot be questioned. Article 3 of the Hague convention for the pacific settlement of international disputes expressly stipulates that "powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities," and that "the exercise of this right can never be regarded by either of the parties at variance as an unfriendly act." But it is another question whether the note was judiciously phrased or timely in its appearance. In respect to its phrasing it has been criticized by sympathizers with the cause of the Allies that in declaring that "the objects which the statesmen of the belligerents on both sides have in mind in this war are virtually the same" it puts both the Entente and the Central powers on the same plane, ignoring Germany's initial crime of refusing an international conference to settle the dispute between Austria and Serbia and all the subsequent crimes that have followed upon the first. In respect to its timeliness the note has been criticized as robbing Great Britain of the strategic advantage of having had Germany put herself in a position where, having made the first advances, she must be the first to state the terms upon which she is ready to conclude peace. On the other hand it is argued that the President's note, whatever might be the sympathies of the United States government, was of necessity framed in terms which make no distinction between the belligerents as to the justice of their cause. The note was cordially received in Germany except among chauvinistic circles. In its official answer to the note on December 26 the German government failed to make any statement of terms, but contented itself with asking for a conference of delegates of the belligerent states at some neutral place. This was followed on December 30 by the formal reply of the Entente powers to the German overtures, in which the allied governments repudiated the German propositions as "a sham proposal," and repeated the necessity for reparation and guarantees. There is much significance, however, in the words, "A mere suggestion, without a statement of terms, that negotiations should be opened is not an offer of peace." This would seem to be a veiled intimation that a statement of terms would be received with consideration.

On January 12 the text of the answer of the Entente Allies to the President's note was published, and unlike the reply of Germany it contained a definite statement of the terms upon which the Allies would consider the restoration of peace possible. These terms include the restoration of territory at present occupied by the Central Powers with just reparation, together with a suggestion of the restitution of Alsace-Lorraine and of further arrangements of terrtiory so as to satisfy the principle of nationalities and to prevent aggression. In addition the Ottoman Empire should be expelled from Europe as being radically alien to western civilization. While the note specifically disclaims an intention to exterminate Germany it was almost unanimously received in that country as having such an object, and the press from the conservative *Kreutzzeitung* to the radical *Vorwaerts* has repudiated its terms.

Constructive Proposals for International Peace. The advocates of the League to Enforce Peace and similar plans of international coöperation as the basis of the future peace of the world, after having won over the support of President Wilson and Mr. Hughes to their cause, must needs be heartened by the entrance into their ranks of a far more significant convert in the person of the German Chancellor von Bethmann-Hollweg. On November 9 the chancellor declared that "if at, and after, the end of the war the world will only become conscious of the horrifying destruction of life and property, then through the whole of humanity there will ring out a cry for peaceful arrangements and understandings which, as far as they are within human power, will prevent the return of such a monstrous catastrophe. This cry will be so powerful and so justified that it must lead to some result." There is, of course, nothing in the chancellor's statement to indicate his acceptance of anything more than the general principles upon which the league bases its program. The specific proposals of the league are, however, merely tentative in nature. What is to be the precise character and composition of the arbitration court to be established, what is to be the exact scope of its jurisdiction, what the nature of the executive force which is to see to the carrying out of its decisions, are points on which final agreement is at present impossible and perhaps undesirable. But the fundamental idea of the league is definite enough, and it can easily form a point of departure for negotiations. In the President's note of December 18, there is a renewed suggestion of the readiness of the United States to coöperate in the accomplishment of the task of preventing future wars. The British govern-

ment has on several occasions, and again in its reply on December 31 to the overtures of Germany, stated its terms of peace as consisting of restitution, reparation and guarantees against future aggression. The first two points are fairly definite, the last somewhat obscure, and it is safe to say that in the absence of a definitive victory by the Entente powers the willingness of the United States to enter into a league of nations to secure the peace of the world would greatly contribute to satisfying them in respect to guarantees against future aggression on the part of Germany. In the reply of Germany to President Wilson's note of December 18 it is stated that "the Imperial Government is also of the opinion that the great work of preventing future wars can be begun only after the end of the present struggle of the nations. It will, when this moment shall have come, be ready with pleasure to collaborate entirely with the United States in this exalted task." This attitude cannot, of course, satisfy the Entente powers in respect to "guarantees," since coöperation in respect to preventing future wars must be coincident with, and not subsequent to, the peace settlement if it is to contribute to removing fear of aggression. On January 22 President Wilson replied to the charges made in many quarters, that in promising the coöperation of the United States in a league to secure peace he was acting without authority, by addressing the Senate as the body associated with him in the determination of foreign relations. In this address he lays down the conditions under which he considers it possible that the United States might coöperate with other nations in establishing an authority to guarantee peace. These conditions are stated in part as abstract principles of democracy and the equality of rights of great and small nations alike, and in part as a program of freeing nationalities from alien rule, securing an outlet to the sea for inland nations, establishing the freedom of the seas, and limiting armies and navies. Two phrases used by the President have been sharply criticized: "peace without victory," which has been resented by both belligerents, and the "freedom of the seas" to which it is difficult to attach a meaning, since the seas are already free in time of peace, and which is resented by the Allies as the adoption of a catchword used by Germany since the beginning of the war. In other respects the division of opinion in the American press as to the value of the address has unfortunately been largely along party lines.

The American Association for International Conciliation has recently issued a very useful compilation in the form of a volume entitled, *Towards an Enduring Peace*, A Symposium of Peace Proposals and

Programs, 1914–1916, edited by Randolph S. Bourne with an introduction by Franklin H. Giddings (New York, 1916, pp. 336). After setting forth the economic and political principles upon which a settlement must be based, a series of selections is presented dealing with the general question of a league of peace, and this is followed by an appendix in which are collected definite programs for peace put forward by private individuals and by various national and international associations. The impression produced by this imposing array of proposals for international reorganization is that while it might not be impossible to set up the machinery of an international league in the shape of an international court and an international police force, it is a far more difficult question to secure an agreement upon the principles which are to govern the international tribunal in the settlement of controversies between the nations. The comparison is frequently made between a league of nations and the league of the newly formed American states under the Articles of Confederation from 1781 to 1789. But in the case of the American confederation there were far more solid foundations upon which to build. A common language and for the most part a common race and a common legal and political inheritance made the agreement upon a common federal government a much simpler matter than would be a similar agreement between the nations of the world. Moreover, the economic interests of the American states presented a simple problem in comparison with the complexity of international economic relations of the present day. It would seem that if the pacifist program is to be made more possible of acceptance as a vital international force greater scientific study is needed in the field of substantive international law than in the field of international procedure.

The most imposing body of source material dealing with the events immediately preceding the war is contained in the new volume entitled *Official Diplomatic Documents, Relating to the Outbreak of the European War*, edited by Edmund von Mach (New York, The Macmillan Company, 1916, pp. xxii, 608, with unpaged appendix). The object of the volume is to present a source book at once complete in respect to available material and systematic in presentation, so as to facilitate the intelligent study of the momentous negotiations from which the world will deduce the immediate responsibility for the war. This work is divided into three parts: Part I containing the despatches (in English) sent and received at the various foreign offices, arranged according to dates with secondary arrangement according to countries, and includ-

ing diaries, summaries of the despatches sent and received, together with editorial footnotes. Part II contains certain diplomatic documents, forming part of the several official communications, which could not be fitted into the scheme of Part I. Part III contains other documents in point, but not contained in the official collections of documents. Finally in an appendix the several official publications of collected diplomatic documents are presented in photographic reproduction. The purpose of this duplication of documents is to enable the student himself to check the accuracy of any given passage of importance by consulting the original, while at the same time the editor is relieved of vouching for the accuracy of the translation and of discussing every inaccuracy he himself discovered however slight it might have been. Attention is drawn in footnotes to mistranslations bearing upon disputed points. A cursory examination of the volume is sufficient to show so much bias in the comments of the editor as to deprive the work of scientific standing and to discredit even that part of it which is well done. This is particularly unfortunate in view of the skill shown in the arrangement of material and the valuable summaries accompanying the negotiations of each day. The book was placed on the market late in September, following which the publishers received a number of complaints of inaccuracies, with the result that the volume was withdrawn from sale in December and submitted by the publishers to an expert whose report is to determine whether it is to be again placed on sale.

General George B. Davis's *Elements of International Law*, so long in use in colleges and law schools, appears in a fourth and revised edition by Gordon E. Sherman. Chapters I and II have been rewritten in part, Chapter VI has been enlarged, references to recent works have been added in footnotes, and the appendices have been increased to include a list of the signatures, ratifications, adhesions and reservations of the conventions of the two Hague conferences, as well as the text of the Declaration of London and other material. But it is to be regretted that the revision was not more thorough-going and that the patchwork of the previous edition (different fonts of type constantly appearing on opposite pages) has been continued and indeed increased by the latest additions. There are two distinct bibliographies at the beginning of the work, in order not to disturb the paging of the original edition. Perhaps the most serious fault is the treatment of the subjects of contraband and blockade without detailed discussion of the provisions of the Declaration of London bearing on those subjects.

MUNICIPAL AFFAIRS

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Although the new charter proposed for the city of Los Angeles was defeated last June at the polls, several important charter amendments, advocated by the Municipal League of Los Angeles, were adopted at the November election. These amendments included measures consolidating the city assessment and tax-collection offices with those of the county, and combining municipal with state and county elections. The other amendments authorized the city: to compel railroads to elevate or depress railway tracks; to make and enforce all laws affecting the municipality; to conduct its public improvements by contract or day labor; to permit easements for public improvements through public parks; to vest in the hands of special commissioners the funds donated for public parks; to accommodate outside municipalities by the temporary sale of power; to pay semi-monthly or weekly salaries to its employees; to provide for possible meetings of the city council on five days each week. Of these the more important are the provisions for carrying on public improvements by either contract or day work—with an estimated annual saving of $1,000,000; for permiting the consolidation of city and county officers; and for holding special city elections on the same day with state or county elections.

In June, 1915, a commission-manager charter was adopted for St. Augustine, Florida, by a majority of only 18 votes. The success of its operation may be gauged in some degree by facts brought out in the recent November election. At that time a vote was taken on the matter of a further charter revision, urged by opponents of the commission-manager plan then in operation. That plan was sustained by a vote of more than two to one.

The new charter adopted at the end of August by the city of Grand Rapids, Michigan, provides for a commission of seven, two elected from each of the three wards and one at large, to serve during a two-year term, and for a city manager appointed by the commission. The other elective officers are the comptroller, four county supervisors, and one constable in each ward, five library commissioners and two justices of the peace from the city at large. All administrative officers, except the city attorney, city clerk, city treasurer, and three assessors, are to be

appointed by the city manager, who will have powers similar to those given by the Dayton charter. For example, the city manager prepares the budget, and, as in Dayton, full publicity is secured by the requirement that a copy of the budget be mailed to every voter at least twenty days before action by the commission. The charter also contains provision for direct legislation and the recall, with the necessary percentages based on the total registration. An unusual feature is the requirement that the commissioners serve *ex officio* to the civil service board. The disadvantages of this arrangement are somewhat offset by the fact that the competitive classification includes all offices and employments for which a competitive examination can be used in the determination of fitness.

The commission form of government has been discontinued in Huntsville, Alabama, the action being due, it is alleged, to an increase in tax and water rates made necessary because of a falling off in revenues from the sale of liquor.

The National Municipal League held its twenty-second annual meeting at Springfield, Massachusetts, on November 23–25, in conjunction with a number of associations devoted to municipal reform, notably the City Managers Association, the Conference on Municipal Research, the Training School for Public Service, and the Civic Secretaries Conference. The program of the National Municipal League included an address by its President, Lawson Purdy, on "Some Advance Municipal Steps," an address by Clinton R. Woodruff on "Municipal Preparedness," a series of addresses by Charles A. Beard, W. D. Lightall, John J. Murphy and Governor Charles S. Whitman on "Political Parties in City Government: a Reconsideration of Old Viewpoints," another series on "Problems in City Planning," another on the "Extension of Municipal Activities and Municipal Expenditures," and a final series of addresses on the "Practical Operation of Various Forms of City Government." Reports of committees were also presented.

The National Municipal League's Committee on Instruction in Municipal Government has printed[3] the results of its sixth inquiry concerning the extent to which American universities and colleges have made place for the subject in their present curricula. Information was

[3] See *National Municipal Review*, v, No. 4, pp. 565–573 (October 1916). The article has also been reprinted.

secured by means of questionnaires sent to these institutions throughout the country, and has been tabulated as to courses devoted both wholly and partly to the teaching of municipal government, giving in each case the number of graduate and undergraduate students taking the courses and the amount of time which the courses cover. Four outstanding features may be noted regarding present-day instruction in municipal government. (1) The amount of instruction has steadily grown. Independent courses in municipal government were given in 1908 by 46 institutions, in 1912 by 64, and in 1916 by 95—a greater increase than has been shown in any other country. The number of institutions which offer definite, but not independent, instruction in municipal government is, of course, much larger (141). Three or more distinct courses devoted wholly to the subject are offered by 7 institutions. (2) There has been a decided improvement in the methods of teaching city government, due to the publication of better textbooks, of periodicals, and of an infinite number of pamphlets and reports on every conceivable phase of the subject. The lecture system has declined; individual research has become a popular method. (3) Forty-six institutions report some variety of research bureau, reference library, or workshop in connection with this instruction. And (4) the student is being brought into contact with the actual working of city government and administration through coöperation with neighboring cities. This is especially true in the case of post-graduate students. In general, the report shows that the progress made during the last few years is notable, and that one may reasonably expect a continuance in the future.

The *Proceedings* of the Seventh Annual Conference of Mayors and Other City Officials of New York State for 1916, bears the title of *City Problems* (Albany, 1916, pp. 117). The volume contains the following papers of interest: "The State and the Municipality," by Francis M. Hugo (secretary of state); "Unemployment in Cities," by Harry N. Hoffman (mayor, Elmira); "New York State's Coöperative Plan for Securing Municipal Data," by James T. Lennon (see below); "Uniform System of Accounting for Cities of the Third Class of New York State," by Fred S. Reusswig (deputy state comptroller); "Activated Sludge Method of Sewage Disposal," by T. Chalkley Hatton (chief engineer, Milwaukee sewage commission); "The Effect on Cities of Amendment to Workmen's Compensation Law," by Edward P. Lyon (commissioner, state industrial commission); "Uniform Health Bud-

gets," by Dr. Lindsay R. Williams (deputy health commissioner); "Exemption of Real and Personal Property for Taxation," by Martin M. Saxe (president, New York State tax commission); "The Attitude of the State Education Department Towards City Schools," by John H. Finley (commissioner of education); "Training for Public Service, with Special Reference to Training of Accountants," by E. A. Fitzpatrick; "New York State's Uniform Bond Law," by Edward S. Osborne (comptroller, Rochester); "Standard Units for Comparing Municipal Improvements," by A. Prescott Folwell; and "Limiting the Heights of Buildings and Restricting the Use of Property," by Lawson Purdy (president, New York City department of taxes and assessments).

A brief account has been issued of the facilities, work and services which are being maintained for the cities of New York State by the State Bureau of Municipal Information of the New York State Conference of Mayors and Other City Officials (*New York State's Coöperative Plan for Securing Municipal Data*, 11 pp.) Organized to "bring order out of chaos" in the collection of municipal data, the bureau has served as a central clearing-house for all the municipalities of the State; it announces itself as a "non-partisan, non-factional servant of each and every official in all cities in the State." All requests must be made to the bureau through city officials, and information is sent only to them —its character as exclusively an organization of and for the cities in the State distinguishes the bureau from all other similar undertakings in the country. Its detailed functions as outlined are manifold; briefly, it is to furnish all available information about any municipal problem to any New York State city official requesting it, to gather data on subjects of probable interest and distribute the information among city officials, to keep city officials in touch with one another by distributing new ideas and plans, to watch all legislation affecting municipalities and keep the cities informed about this kind of legislation, to represent, through its director, the interests of any city before any state department, to supply information about manufactures, price lists, etc., of apparatus and products used by cities, to issue and send to mayors and city clerks a semi-monthly bulletin containing general municipal information, announcements of activities and lists of subjects of research during the past fortnight. During the first eight months of its service, the bureau has investigated and issued reports on about 150 subjects in the field of municipal government and administration. Of these, special attention was given to municipal house-cleaning, water rates,

and salaries. A vast amount of information has been furnished to city officials at their request, and in addition to its general research special work has been carried on to a considerable extent for individual cities. The work of the bureau is entirely financed by cities of the State, under authority given by a general state law. The scale of contributions is $500 annually from each first-class city, $300 from each second class city, and $150 from third-class cities, another unique feature of this coöperative bureau.

A series of Budget Bulletins is being issued by the Bureau of Municipal Research of the Minneapolis Civic and Commerce Association. To date two have appeared. No. 1 contains an analysis of proposed expenditures of city departments for 1916; the theme of No. 2 is that "the board of tax levy must cut radically to come within a forty-mill tax levy." Both bulletins are graphically illustrated.

For persons interested in public welfare work the reports of two cities should be useful. These are the *First Annual Report, Department of Public Welfare, City of Dallas* [Texas], 1915–1916 (pp 88.) and *The Department of Public Welfare, City of Dayton.* By D. F. Garland, director. (September, 1916. 15 pp.) The first-mentioned is a complete report which covers every variety of the welfare work of the city from its actual accomplishments to the possibilities to which it is hoped the department may rise. From the second report, that on the Dayton welfare department, might be quoted some of the results it has achieved. The death rate of the city has been reduced from 15.7 in 1913 to 13.7 in 1914 and to 13.007 in 1915. Furthermore, infant mortality has declined from 124 per thousand in 1913 to 95.9 in 1914 and to 87.2 in 1915. To this reduction the activities of the department in raising the standard of the milk supply, cleaner markets, bakeries and candy factories, its free clinics and its school inspections, its improvements in sewer conditions, and its general clean-up of the entire city, have been large contributors.

Four substantial contributions to the subject of unemployment in cities have been made, or are in course of preparation, by the mayor's committee on unemployment, New York City, and may be obtained through the secretary of the committee, Municipal Building, New York City. In January, 1916, the committee issued its report (109 pp.), which describes in detail the various steps taken by the city, by the com-

mittee, and by private organizations to cope with the situation existing during the winter of 1914–15. The report contains also constructive proposals for a program of immediate relief, for the prevention of unemployment, and for the "organization of permanent machinery to avert the baneful effects in the past associated with it—based largely on foreign experience." A further report appeared in October on *Dock Employment in New York City and Recommendations for its Regulation* (82 pp., 50 cents), which reviews the principal facts concerning the lack of organization in the employment of longshoremen and gives causes and results of their irregular employment. In recommending the centralization of labor supply through a system of clearing houses and other reforms, there is a detailed discussion of foreign methods in regularizing dock employment. A pamphlet on *Planning Public Expenditures to Compensate for Decreased Private Employment during Business Depressions* (32 pp.), issued in November, advocates, as a practicable method of dealing with "cyclical unemployment" in the United States, a policy of public spending on permanent improvements. This policy is defended by a calculation based upon facts established by the successful experience of other countries. Lastly, the committee has prepared a report on *How to Meet Hard Times—A Program for the Prevention and Mitigation of Abnormal Unemployment* (ca. 100 pp., 25 cents), discussing the best means of preparing against such a period as that experienced two years ago. Recommendations are made along the line of action by employers, "high finance" and the government, as well as by the city of New York and its various social agencies, for the establishment of permanent machinery to aid in preventing unemployment and in providing against the distress resulting from it, in addition to methods for relieving distress when it is no longer preventable.

Recent numbers of *Municipal Research*, a monthly publication issued by the New York Bureau of Municipal Research and Training School for Public Service, are as follows: No. 75, July, 1916, is entitled *The Purposes of the Indebtedness of American Cities, 1880–1912* (72 pp.), by Fred Emerson Clark. The appendix contains tables of the debts of cities by population groups and by geographical sections, classified according to the purpose for which the debts are incurred, for the years 1912, 1904, 1890, and 1880. No. 76, August, 1916, is a continuation of an earlier study, being Part II, *The Practical Side of Standardization in American Governments* (48 pp., charts, statistical tables). Part I, which appeared as No. 67, November, 1915, is entitled *The Standardiza-*

tion of Public Employments. Special attention is given to standardization in Chicago, Pittsburgh, New York City, and New York State in general. The issue for September, 1916, No. 77, contains an historical sketch of *City Agencies for Research in Government* (124 pp.). The research bureaus considered are the Boston Finance Commission, the Philadelphia, Dayton and Akron Bureaus of Municipal Research, the Chicago Bureau of Public Efficiency, the Ohio Institute for Public Efficiency, the Milwaukee Citizens' Bureau of Municipal Efficiency, the Bureau of Municipal Research of the Minneapolis Civic and Commerce Association, and the Bureau of State Research of the New Jersey State Chamber of Commerce.

Standardizing public employments has been made the subject of further investigation in a report by Mr. J. L. Jacobs of Chicago at the request of the Milwaukee Citizens' Bureau of Municipal Efficiency. The scope of the report is well indicated by its title, *Review of Movement for Standardization of Public Employments and Appraisal of the Proposed Salary Standardization Plans for the Milwaukee City Service, with Constructive Recommendations and Next Steps for Developing Effective Employment Administration in Milwaukee* (October 28, 1916, 45 pp.). Mr. Jacobs's study is in the main a criticism of a salary-standardization plan under consideration by the Milwaukee common council, prepared by its City Hall Bureau of Municipal Research. It recommends among other things that an ordinance (Appendix B) be adopted establishing the principle of uniform salaries for like duties, services and qualifications as a preliminary basis for future control of employment in the city service; that greater support and more complete organization be provided for the city civil service commission, with an appropriation of not less than $15,000 for the year 1917; that a scientific and thorough survey of conditions of employment and distribution of positions and salaries be undertaken by the commission in coöperation with the council committee on finance and departmental officials. A number of specific suggestions are made in regard to the methods, essentials and principles to be sought in such a survey. In connection with the survey and the developments which, it is hoped, will follow, the following recommendations are suggested: the establishment of public service schools, providing for training prospective and present public employees for fitness and for higher duties; the establishment of coöperative relations and measures between employers and administrative officials, tending to improve conditions of employment, organization and

methods; the establishment of wide publicity of the opportunities in the public service, encouragement to trained men and women to find a career in official life; the establishment of additional administrative machinery for the purpose of merit control and obtaining legislative authority for same—such as limitation of exemptions from the classified service, establishment of trial boards for disciplinary and other purposes and complete control of employment administration by paid employment specialists; the establishment of a scientific pension system for all employees in the public service.

The Board of Estimate and Apportionment of New York City has published a report on *Standard Specifications for Personal Service* (1916, pp. 931). The object of the volume is "to furnish a simple and logical classification of all employments in the city government, with general description of duties, appropriate titles and rates of compensation, and conditions governing initial appointment, advancement and promotion as a basis for appropriation and current fiscal and civil service control and for information to present and prospective employees and the public."

Among the pamphlets and reports dealing with municipal government which have been recently issued, the following are of especial interest: *Civil Service Rules of the West Chicago Park Commissioners* (Chicago, 1916, 99 pp.), containing the civil service rules, the Illinois park civil service act, the Fifth Annual Reports of the Civil Service Board and of the Superintendent of Employment and Efficiency Regulations; St. Louis City Plan Commission, *River des Peres Plan. Concerning largely the industrial and residential expansion and economic welfare of St. Louis* (St. Louis, 1916, 38 pp., charts, plans, tables); Adams, Thomas, *City Planning, An address before the Cleveland Chamber of Commerce, June 6, 1916* (1916, 23 pp.); State of Colorado, Committee on Unemployment and Relief, *Report of Secretary* (Denver, 1916, 47 pp.); California State Board of Education, *Disposal of Sewage in Rural School Districts*, prepared by C. G. Gillespie and Margaret S. McNaught (Sacramento, 1916, 15 pp., Bulletin No. 17); Brooklyn Bureau of Charities, Tenement House Committee, *Report on the Progress of Housing Reform in Brooklyn and a Study of Land Overcrowding in Brooklyn* (Brooklyn, 1916, 47 pp.); Klink, Bean and Company, *Practical Municipal Accounting. A brief description and summary of the modern uniform system of accounts installed in the offices of the City of Oakland, California*

(San Francisco, 1916, 25 pp., charts); Massachusetts Board of Education, *Annual School Reports of Towns and Cities. A Study of School Reports of Towns and Cities in Massachusetts* (Boston, 1916, 44 pp., charts. Bulletin, 1916, No. 20); and *Information relating to the Establishment and Administration of State-Aided Vocational Schools* (Boston, 1916, 65 pp. Bulletin, 1916, No. 22); Chicago Department of Public Welfare, *Public Comfort Stations* (Chicago, October, 1916, 44 pp. Bulletin I, No. 3); Massachusetts Board of Gas and Electric Light Commissioners, *New Legislation of Especial Interest to Gas, Electric, and Water Companies and Municipalities Owning Lighting Plants, 1916* (Boston, 1916, 28 pp.); *Reports by the New York City Committee on Recreation* (New York, October, 1916, 23 pp.).

ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

The American Political Science Association held its thirteenth annual meeting December 27–30 at Cincinnati, Ohio, with headquarters at the Gibson Hotel.

The meeting opened Wednesday evening with a session devoted to the veto power of the governor, the chief papers being presented by Prof. John A. Fairlie and Prof. C. A. Beard. On Thursday morning two sessions were held, one on municipal government in the United States and the other on the teaching of political science below the college. Henry M. Waite, city manager of Dayton, spoke on three years of commissioner-manager government in Dayton and Henry T. Hunt, ex-mayor of Cincinnati, discussed obstacles to municipal progress. Papers by Prof. Thomas F. Moran, Carl E. Pray and Lucius B. Swift were presented on the teaching of political science.

In the afternoon Federico A. Pezet, ex-minister of Peru to the United States, presented a paper on Pan-American coöperation in Pan-American affairs, and Carlos Castro Ruiz, consul general of Chile in the United States, discussed the Monroe Doctrine and the government of Chili. A paper was presented by F. C. Schwedtman, of the National City Bank of New York, on lending our financial machinery to Latin America.

Contemporaneously with the Latin American meeting was held one on labor legislation and its enforcement, at which Dr. Thomas I. Parkinson and Mrs. Florence Kelley presented the leading papers.

On Thursday evening a joint meeting was held with the American Historical Association, with addresses by Prof. Jesse Macy, president

of the American Political Science Association, on the scientific spirit in politics, and by Prof. George L. Burr, president of the American Historical Association, on the freedom of history.

At the Friday morning session there was a discussion of military and naval administration in the United States with papers by Robert W. Neeser of New York, Frederic L. Huidekoper of Washington and Prof. W. A. Schaper.

In the afternoon the annual business session of the association was held. The following officers were elected:

President, Munroe Smith, Columbia University.

First Vice-President, B. F. Shambaugh, University of Iowa.

Second Vice-President, L. S. Rowe, University of Pennsylvania.

Third Vice-President, Isidor Loeb, University of Missouri.

Secretary and Treasurer, Chester Lloyd Jones, University of Wisconsin.

Members of the Council: A. N. Holcombe, Harvard University; J. S. Reeves, University of Michigan; D. Y. Thomas, University of Arkansas; F. A. Updyke, Dartmouth College; J. S. Young, University of Minnesota.

Board of Editors: F. W. Coker, Ohio State University; Herbert Croly, New York City; W. F. Dodd, University of Chicago; Charles G. Fenwick, Bryn Mawr College; John A. Lapp, Indianapolis; W. B. Munro, Harvard University; Frederic A. Ogg, University of Wisconsin; and W. W. Willoughby, Johns Hopkins University.

The council reported the election of John A. Fairlie as managing editor of the AMERICAN POLITICAL SCIENCE REVIEW.

On recommendation of the council, the appointment of a committee to prepare a critical bibliography of political science was authorized.

The Friday evening meeting was devoted to federal administration of the United States, with addresses by Carl S. Vrooman, assistant secretary of agriculture, and Theodore E. Burton, ex-senator from Ohio.

On Saturday morning the American colonial policy in the Philippines was discussed by Dr. James A. Robertson of Washington.

An enjoyable feature of the sessions was a series of luncheons and dinner conferences. On Saturday evening the ladies of the various associations met at the Hotel Gibson for dinner. On Thursday noon a luncheon was tendered the associations by the University of Cincinnati. Thursday evening an informal dinner conference was held at which the subject of book reviewing for political science journals was discussed. At luncheon on Friday bureaus of reference and research as aids in the teaching of political science, and the outlook for training

schools and training courses for public service were given consideration. Friday evening an informal dinner conference was held to discuss the teaching of constitutional law. The session closed with a joint luncheon with the American Association for Labor Legislation at the Hotel Sinton devoted to the consideration of health insurance.

Summary of financial statement of the American Political Science Association for the year ending December 15, 1916

Receipts

Balance in general account January 1, 1916	$207.75
Balance in trust fund	229.67
Membership dues	4230.30
Life memberships	120.10
Publications	200.79
Advertising in REVIEW	44.24
Reprints	2.50
Subscriptions received for *Harper's Weekly*	4.50
Total	$5039.85

Expenditures

Bills paid for 1915		$884.61
Refunds		6.35
Clerical assistance to secretary-treasurer		271.67
Postage		299.25
Williams & Wilkins for REVIEW, February, May, August and $300.00 on November account		2218.43
Clerical expenses W. W. Willoughby, February and May issues		95.85
Clerical expenses J. A. Fairlie, August and November issues		140.00
Legislative notes		100.00
News and Notes		28.00
Program committee		35.16
Special membership campaign appropriation		337.46
Miscellaneous printing		175.00
Payments for REVIEWS No. 1 and 2, Vol. VI returned		6.00
Typewriter		30.00
Miscellaneous		23.08
Total		$4650.86
Balance:		
Trust fund	$229.67	
General account	39.22	
Life membership account	120.10	388.99
		$5,039.85

There are 1547 members of the association. There are 48 life memberships fully paid.

RECENT PUBLICATIONS OF POLITICAL INTEREST[1]

BOOKS AND PERIODICALS

AMERICAN GOVERNMENT AND PUBLIC LAW

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[1] Data lacking for publications issued in Austria-Hungary and Germany.

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Governor. The governor under the Constitution. *Malcolm H. Laucheimer.* American Law Review. Oct. 1916.

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Railways. The threatened strike on the railways. *Samuel O. Dunn.* North Am. Rev. Oct. 1916.

——— Constitutionality of the eight-hour railroad law. *Malcom H. Laucheimer.* Columbia Law Review. Nov. 1916.

——— The eight hour railway wage law. *Harry T. Smith.* Virginia Law Review. Nov. 1916.

——— The railroad eight-hour law. *W. Z. Ripley.* Rev. Rev. Oct. 1916.

——— The trainmen's eight-hour day. *E. C. Robbins.* Pol. Sci. Quarterly. Dec. 1916.

Revenue. The new revenue act. *Roy G. Blakey.* Am. Econ. Review. Dec. 1916.

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Brusewitz, Axel. Representationsfrågan vid 1809–10 års riksdag. Upsala. 1913.

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